United States Court of Appeals

for the Second Circuit

APPENDIX

75-1221

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1221

UNITED STATES OF AMERICA,
Appellee,

—vs.—

CHARLES LUCCHETTI,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

HENRY J. BOITEL
Attorney for Defendant-Appellant
Charles Lucchetti
233 Broadway
New York, New York 10007
(212) RE 2-8104

DAVID G. TRAGER
United States Attorney for the
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201
(212) 596-3417



PAGINATION AS IN ORIGINAL COPY

INDEX

	Page
Docket Entries	A. 1
Superseding Indictment	A. 11
Judgment of Court of Appeals (June 12, 1972)	A. 15
Order of Supreme Court denying Certiorari (November 6, 1972)	A. 16
Motion for Reduction of Sentence (February 23, 1973)	A. 17
Admission of Service and Filing Stamp (February 23, 1973)	A. 17
Motion	A. 18
Affirmation of Henry J.Boitel, Esq.	A. 19
Letter of Mrs. Barbara Lucchetti	A. 25
Memorandum of Ronald Baratta, M.D.	A. 27
Transcript of Argument of Motion for Reduction of Sentence (March 2, 1973)	A. 28
Notice of Motion, pro se, of Charles Lucchetti for Writ of Habeas Corpus and for Disqualification of Trial Judge (July 22, 1974)	A. 35
Affidavit in Support of Motion for Disqualification of Judge	A. 36
Proposed Writ of Habeas Corpus	A. 38
Petition for Writ of Habeas Corpus	A. 39
Appendices to Motion	A. 47
A. Extract of Trial Transcript (8/3/71)	A. 48
B. Extract of Guilty Plea of Jack Dempsey in United States v. Dempsey (10/1/71)	A. 72
C. Extract of Guilty Plea of Jack Dempsey in People v. Dempsey (10/20/71)	A. 73

Page

D. Extract of Sentencing Transcript in United States v. Dempsey (1/7/72) ..... A. 73

E. Affidavit of Sanvatore Gansi (11/18/71) ..... A. 76

F. Affidavit of George Balboa (undated) ..... A. 77

G. Affidavit of Bobby Townsend (1/18/73) ..... A. 77

H. Affidavit of Pasquale Della Santa (undated) ..... A. 79

I. Extract of Transcript of Arraignment of Jack Dempsey in People v. Dempsey (5/17/71) ..... A. 82

Memorandum of Decision and Order (Mishler, C.J.) Granting Petition, Vacating Judgment, and Granting New Trial (12/16/74) ..... A. 90

Omnibus Motion for Discovery and Inspection, Suppression and Dismissal as to both Indictments A.109

Affidavit of Charles Lucchetti in Support of Motion A.113

Affidavit of H. Elliot Wales, Esq., In Support of Motion A.116

Letter of H. Elliot Wales to United States Attorney (3/17/75) A.118

Affidavit of Assistant United States Attorney Joan S. O'Brien in Opposition to Motion (April 11, 1975) A.120

1. F.B.I. Interview Sheet (9/3/71) A.132

2. Letter of Charles Lucchetti to F.B.I. (3/20/72) A.133

3. F.B.I. Report (3/31/72) A.134

4. Letter of Charles Lucchetti to F.B.I. (5/31/72) A.137

		Page
5.	F.B.I. Report (6/6/72).....	A.138
6.	Letter of Charles Lucchetti to F.B.I. (6/8/72)	A.140
7.	F.B.I. Report (6/20/72)	A.141
8.	Letter of Charles Lucchetti to F.B.I. (6/20/72)	A.142
9.	F.B.I. Report (6/27/72)	A.143
10.	Letter of Charles Lucchetti to F.B.I. (6/27/72)	A.144
11.	F.B.I. Report (7/27/72)	A.145
12.	F.B.I. Report (7/27/72)	A.146
13.	Letter of Charles Lucchetti to F.B.I. (7/26/72)	A.147
14.	F.B.I. Report (8/7/72)	A.148
15.	F.B.I. Report (8/11/72)	A.158
16.	F.B.I. Report (8/14/72)	A.166
17.	F.B.I. Report (8/31/72)	A.170
18.	F.B.I. Report (9/7/72)	A.173
19.	F.B.I. Report (9/11/72)	A.175
20.	F.B.I. Report (9/11/72)	A.176
21.	F.B.I. Report (9/27/72)	A.178
22.	F.B.I. Report (10/10/72).....	A.179
23.	F.B.I. Report (10/5/72)	A.180
24.	F.B.I. Report (10/11/72)	A.181
25.	Letter of Charles Lucchetti to F.B.I. (10/7/72)	A.183
26.	F.B.I. Report (10/16/72)	A.184
27.	Grand Jury Minutes of Testimony of Charles Lucchetti (10/19/72)...	A.187

Page

28. F.B.I. Report (6/3/74) A.202

29. F.B.I. Report (7/19/74)..... A.203

Memorandum of Decision and Order (Mishler, D.J.) denying Defendant's Motion for Disqualification of Judge (undated, filed April 17, 1975) A.205

Defendant's pro se Notice of Motion for Pre-trial Relief (4/18/75)..... A.209

Defendant's pro se Pre-Trial Motion for Dismissal of Indictment (April 18, 1975).... A.215

Defendant's pro se Motion for Pre-Trial Relief (4/24/75) A.216

Defendant's Notice of Appeal from Order Denying Petitioner's Motion that District Judge Disqualify Himself (4/24/75)..... A.220

Defendant's pro se Supplemental Motion for Pre-Trial Relief (4/29/75) A.223

Defendant's pro se Motion for Dismissal of Indictment (4/30/75) A.231

Memorandum of Decision and Order (Mishler, D.J.) denying Defendant's Motion to Suppress Statements (5/12/75)..... A.243

Memorandum of Decision and Order (Mishler, D.J.) Ruling Upon Defendant's Pre-Trial Motions (May 12, 1975) A.266

Memorandum from Mishler, C.J. to Weinstein, D.J. Summarizing Proceedings (5/14/75) A.278

Court's Charge to Jury (Weinstein, D.J.)..... A.282

Jury's Request with Respect to Confessions of Charles Lucchetti A.299

Jury's Request with Respect to Admission of Charles Lucchetti A.301

Jury's Request with Respect to Knowledge A.303

Jury's Verdict A.306

Page

Transcript of Sentence (May 23, 1975)..... A.310

Defendant's pro se Motion for a Directed Verdict and/or Dismissal of Indictment (4/30/75) A.317

Judgment and Commitment (5/23/75) A.323

Notice of Appeal (5/23/75) A.324

Defendant's pro se Motion to Correct Illegal Sentence (5/23/75) A.325

Defendant's pro se Application for Enlargement of Time Within Which To Move Pursuant to Rules 29 and 34, F.R.Cr.P. (5/24/75) [Memorandum Endorsed, Granting Motion (5/27/75)] A.327

Defendant's pro se Motion for an Additional Enlargement of Time to Make Motions (6/15/75) A.328

Order (Weinstein, D.J.) Granting Enlargement of Time "to the extent that the Court has the power" to do so (6/19/75)..... A.329

Application of Defendant, pro se, for Order Directing United States Attorney to Furnish Certain Information (6/30/75).... A.330

Memorandum and Order (Weinstein, D.J.) directing United States Attorney to Furnish Information to Defendant (7/28/75) A.331

Notice of Motion, Pursuant to Rules 29 and 34, F.R.Cr.P. (7/29/75) A.333

Memorandum in Support of Motion A.334

Letter of Assistant United States Attorney to Charles Lucchetti with Respect to Requested Information (8/11/75) A.351

Letter of Administrative Counsel of Federal Deposit Insurance Corporation to Charles Lucchetti (August 14, 1975) [Not a Filed Document] A.353

Letter of Administrative Counsel of Federal Deposit Insurance Corporation to Charles Lucchetti (8/25/75) [Not a Filed Document] A.355

Form No. 106

CRIMINAL Ddocket

TITLE OF CASE — WEINSTEIN, J.

THE UNITED STATES

vs.

DAVID WILLIAMS, JACK DEMPSY and CHARLES LUCCHETTI

ATTORNEYS

For U.S.:

LUCCHETTI-Allen Lashley
16 Court Street Brookly
11201 TR5-1128

For Defendant: ~~LUCCHETTI~~
~~Barry Kamins~~
~~32 Court Street~~
~~Brooklyn, New York 11201~~
~~237-1900~~

Bank Robbery

ABSTRACT OF COSTS	AMOUNT
Fine(Lucchetti)	$15000 00
Clerk,	
Marshal,	
Attorney,	
Commissioner's Court,	
Witnesses,	

CASH RECEIVED AND DISBURSED

DATE	NAME	RECEIVED	DIS
10 8 71	Robert Boffal (re fee Lucchetti)		
4/28/75	Notice of appeal(Lucchetti)		
5/23/75	Notice of appeal(Lucchetti) (no fee)		

UNITED STATES COURT OF APPEALS
FILED
JUL 2 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

DATE	PROCEEDINGS
7-20-71	Before Mishler, Ch J - Superseding Indictment filed.
7-22-71	Before MISHLER, J.-Case called-Deft LUCCHETTI present w/o counsel-Deft arraigned and the court enters plea of not guilty for the deft.-Trial for 8-2-71.
7-30-71	Petition for Writ of Habeas Corpus Ad Prosequendum filed as to deft Dempsey.
7-30-71	By MISHLER, CH.J- Writ issued. Returnable August 2, 1971 at 10AM.
8-2-71	By MISHLER, CH J - Order appointing counsel filed (WILLIAMS)
8-2-71	Before Travia IJ - Case called - Defts WILLIAMS & LUCHETTI present with counsel - Order appointing counsel filed (Williams) Order signed - Defts WILLIAMS & DEMPSY ~~arraignedxx~~ severed. Deft LUCCHETTI arraigned and enters a plea of not guilty - Case against

71CR 849

DATE	PROCEEDINGS
	Bail continued as to deft WILLIAMS - deft DEMPSY in custody Counsel Krinsky
8-2-71	Notice of Appearance filed (deft WILLIAMS)
8-2-71	Before MISHLER, J.-Case called-Answered ready-Trial ordered and begun selected and sworn-Atty for deft waives opening to jury-Application by for deft for mistrial is denied-Trial to resume on 8-3-71. (LUCCHETTI
8-3-71	Before MISHLER, J.-Case called-Deft and counsel present-Trial resumed cont'd to 8-4-71 at 12:45 P.M.(LUCCHETTI)
8-4-71	Before MISHLER, J.-Case called-Deft and counsel present-Trial resumed-Application for mistrial on ground that his atty represents another de Dempsey as a conflict of interest-Court denies application-Deft also m application for change of atty-Court denies this application-At reque court, Kenneth K. Rohl continues as atty for deft-Mr. Rohl makes appl. for dismissal on grounds that gov't failed to make a prima facie case- application-Trial to resume on 8-5-71.
8-5-71	Before MISHLER, J.-Case called-Trial resumed-Deft and counsel present Santoro brought in on writ issued 8-4-71-Court assigns Philip Brown as Santoro-Order assigning counsel signed-Atty for deft LUCCHETTI made ap for mistrial-Court denies application-Atty for deft made application Court denies all motions-Jury returned and rendered verdict of guilty and 3-Court merges count 1 and 2-Jury polled and discharged-Bail con sentence adjd w/o date-Application by atty for deft to set aside verd denied-Trial concluded.
8-5-71	By MISHLER, J.-Order of sustenance filed.
8-5-71	By MISHLER, J.-Order appointing counsel filed, as to Matthew Santoro.
8x8x71xxxBYxMISHLERxJxxxxxxxxx	
8-6-71	Writ returned and filed/executed as to deft JACK DEMPSEY
9-28-71	Petition for writ of habeas corpus ad Prosequendum filed. (DEMPSEY)
9-28-71	By MISHLER, J.- Writ issued ret. 10-1-71. (DEMPSEY)
10-1-71	Before MISHLER, CH. J. - Case called. Deft DEMPSEY and counsel prese Deft withdraws his plea of not guilty to Count 3 and after being advi his rights by the court and on his own behalf enters a plea of guilty to Count 3. Bail conditions continued. Sentence adjourned without d
10-15-71	Stenographers transcript filed dated Aug. 5, 1971(Lucchetti)
10-15-71	Notice of Motion filed for dismissal of the Indictment (Lucchetti) ret. Oct. 15, 1971 .
10-15-71	Before Mishler, Ch J - Case called - Deft LUCCHETTI & counsel Kenneth Rohl present - Defts motion for Judgment of Acquittal - is denied (pr Deft LUCCHETTI sentenced to a term of imprisonment on count 2 for 20

CRIMINAL DOCKET

DATE	PROCEEDINGS
	and a fine of $10,000 and 5 years imprisonment and a fine of $5,000 on count 3 pursuant to Sec. 4208(a)(2) of T-18, U.S.Code. Prison terms on count 3 to run concurrently to count 2 - total fine $15,00 Leave to appeal in forma pauperis is granted - Clerk to file Notice of Appeal on behalf of the deft without fee. Bail set at $100,000 Surety Bond -
10-15-71	Judgment and Commitment filed - certified copies to Marshal. (deft LUCHETTI)
10-15-71	Notice of Appeal filed without fee (LUCHETTI)
10-15-71	Docket Entries and duplicate of Notice of Appeal mailed to the Court of Appeals (LUccheti)
10-27-71	Before MISHLER, CH. J. - Case called. Deft. WILLIAMS and counsel pr Deft. WILLIAMS withdraws his plea of not guilty to Count 3 and afte being advised of his rights by the court and on his own behalf ente a plea of guilty to Count 3. Bail contitions continued. Sentence adjourned without date.
11-16-71	Stenographers transcript of 8-5-71 (Charge) taken by E.Karr, Court Stenographers to be returned as additionals papers had to be inserted etc. (receipt in file)
11-24-71	Stenographers transcripts (4 volumes) filed.(deft Lucchetti)
11-24-71	Letter from deft/Lucchetti received from Chambers of Ch.Judge Mishler filed. (Motion by deft to remain at the Federal House of Det. 427 West St., until his aPpeal now pending in C of A is determined)
11-24-71	By Mishler, Ch J -Memorandum of Decision and Order filed that the court recommends that the Attorney General retain or transfer the deft to a place of confinement near the place where defts appeal is to be heard.The Atty General and the Bureau of Prisons has full discretion in the choice of a place of confinement.
12/15/71	Letter received from chambers of MISHLER, CH.J. of deft. LUCCHETTI re: an application to reduce bail pending appeal.
12/15/71	Memorandum of decision and order filed denying deft. LUCCHETTI 's m Copy sent to deft.
1-5-72	Petition for Writ of Habeas Corpus Ad Prosequendum filed (Dempsey)
1-5-72	By Mishler, Ch J - Writ Issued, ret. 1-7-72 (Dempsey)
1/7/72	Before MISHLER, CH.J. - Case called. Defts DEMPSEY & WILLIAMS and c present. Deft. DEMPSEY sentenced to a term of imprisonment on ct 3 a period of 5 yrs pursuant to T.18, U.S.C. 4208(a)(2). Deft WILLIA imposition of sentence is suspended on ct.3 and deft is placed on p

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DATE	PROCEEDINGS
	for a period of 5 yrs. On motion of Asst. U.S. Atty DiPetris, counts
	and 2 are dismissed as to both defts.
2/23/72	~~CHARLES LUCCHETTI, (DEFT.) - Judgment and Commitment filed. Certified copies to~~
1/27/72	~~Probation Dept. (DEMPSEY) - Order dated 1/27/72 filed.~~
1/27/72	[illegible] - Judgment and Order of Probation filed, certified
	copies to probation. (Dicciani)
-10-72	Writ returned and filed - Executed (Dempsey)
1-25-72	Stenographers transcript dated Oct. 15, 1971 filed
2/23/72	Judgment & Committment filed Dated 1/27/72 as to Defendant
	Dempsey
1/28/72	Letter from Atty Lucchetti filed (forwarded to Mishler J
2/1/72	Mishler Ch/J from Ch J Mishler Memorandum Decision Dec 15
	1971 Denying Def Charles Lucchetti Esq Motion for Reduction
3/6/72	Receipt Agreement filed & ack'd.
3/15/72	Record on Appeal certified and mailed to the Court of Appeals
	(deft LUCCHETTI)
3/20/72	Letter Copy of Receipt from Clerk of Court to Chief
	Circuit (Lucchetti)
4/4/72	Copy of Receipt & Agreement of Edward Malz, Esq. filed, acknowledging return of 5 transcripts.
4-14-72	Voucher for compensation of counsel filed (Matthew Santoro)
5-15-72	Letter dated May 2, 1972 received from Chambers of Ch Judge Mishler f: (from deft Dempsey as application for reduction of sentence)
5-15-72	By Mishler, Ch J - Memorandum of Decision and Order filed denying de motion for reduction of sentence etc.) ~~Ordered~~ Order dated May 11, 197
-15-72	Stenographers transcript dated Jan. 7, 1972 filed. (Dempsey)
6-22-72	Certified copy received from C of A and filed affirming the judgment of this court (CHARLES LUCCHETTI). J.N.
7-17-72	~~Letter from Supreme Court to Mr. Boitel dated 7-13-72 filed.~~
7-31-72	Index to Record received from C of A - Acknowledgment mailed to Clerk for receipt of Record (Lucchetti)
8-30-72	Letter dated 8-28-72 from A. Daniel Fusaro, Clerk U.S. Court of Appeal Second Circuit, requesting that the record on appeal previously return be sent to the Court of Appeals, filed. Record mailed as requested.
9-1-72	Acknowledgment received from C of A for receipt of index to record. fi
11-15-72	Copy received from C of A & filed denying petition for writ of certior for CHARLES LUCCHETTI.
2/23/73	Notice of Motion filed for reduction of sentence imposed(LUCCHETTI)(I

CRIMINAL DOCKET 71CR540

DATE	PROCEEDINGS
6/5/73	By MISHLER, Ch. J.- Memorandum of Decision and Order filed, permitt the deft to have a copy of probation report . Probation notified. (Lucchetti)
6-14-73	Letter filed dated June 11, 1973 from deft Lucchetti filed received from Chambers (for motion to reargue courts decision of May 30 directing US Atty to turn over 3500 material)
6-14-73	By Mishler, Ch J - Memorandum of Decision and Order filed denying above motion of deft. Copy of Memo Order mailed to deft.
7/5/73	2 Stenographer's transcripts of 1/7/73 filed.
4/5/74	Stenographer's transcript 2/19/74 filed (Stenographer)
4/16/74	Stenographer's transcript 2/19/74 filed (Rogers)
12-16-74	By MISHLER, CH J - Memorandum of Decision and Order filed vacating Judgment (Lucchetti) and deft is granted a new trial to commence on January 20, 1975. Bail, originally fixed in the amount of $75,000 is continued and it is so Ordered.
12/23/74	Petition, for Writ of Habeas Corpus Ad Prosequendum filed (C. Lucch
12/23/74	By MISHLER, CH.J.- Writ issued, ret. 1/3/75 (C. Lucchetti)
12/24/74	Before MISHLER, CH.J.- Case called- Motion by deft for reduction of b argued-Bail modified at $75,000.00 P.R. Bond with 4 houses as securi and a cash deposit of $7,500.00
1/3/75	Before MISHLER, CH.J.- Case called- Deft LUCCHETTI present without c sel- Motion by deft for reduction of bail denied- Case reset for tri on 3/21/75
1-6-75	Certificate of Engagement and letter to counsel filed indicating case is set down for trial on Monday, Mar. 31,1975 at 10:00 am. (Charles Lucchetti)
1-9-75	By SCHIFFMAN, Magistrate - Order for acceptance of cash bail filed (CHARLES LUCCHETTI)
1-15-75	Notice of Appearance filed (CHARLES LUCCHETTI)
1-17-75	Stenographers transcript filed dated Dec. 24, 1974 (Lucchetti) (bail reduction hearing)
1-30-75	See entry in relating case 75 CR-25 as to deft LUCCHETTI.
2-11-75	Notice of Readiness for Trial filed (LUCCHETTI)
3/11/75	Notice of motion for discovery, inspection, dismissal of indictment and memorandum of law in support of motion etc. filed (entered in 75CR25) (LUCCHETTI)
3-12-75	Before Mishler, Ch J - case called - motion by the Govt to forfeit bail set on deft Lucchetti - hearing held - Hearing concluded - Court declares forfeiture of bail - bail will be

D. C. 193

DATE	PROCEEDINGS
	remitted if the deft surrenders to the U.S.Marshal on or before March 1975 by 4:00 PM.
3-31-75	Before Mishler, Ch J - case called - deft LUcchetti not present - tr adjd without date - deft is a fugitive.
/3/75	Before MISHLER, CH.J.- Case called- Deft LUCCHETTI and counsel present Bail set at $500,000.00 surety co. bond - Trial set for 5/5/75- Deft waives right to a speedy trial from this day until the day set for tri on 5/5/75- Probable cause hearing set down for 4/11/75 at 11:00 A.M. on a new complaint-
4/9/75	Letter from Elliot Wales, esq. to chambers dated 4/7/75 filed re:reque to be relieved as counsel for deft Lucchetti (Letter in 75 CR 25)
4/11/75	Before MISHLER,CH.J.- Case called- Deft LUCCHETTI and counsel present- Motion by Mr. Wales to be relieved as counsel for deft Lucchetti denie Trial adjd to 5/5/75- motion by deft pro se to have court disqualify i self is denied
4/14/75	Letter to Barry Kamins, esq. from Judge Mishler filed re:assignment as (entered in 75 CR 25)
/14/75	By MISHLER,CH.J.- Order filed appointing counsel (LUCCHETTI)
/16/75	By MISHLER, CH.J.- Order appointing counsel filed
4-17-75	By MISHLER, CH J - Memorandum of Decision and Order filed denying motion of deft LUCCHETTI for disqualification of Ch.Judge from presiding over defts forthcoming trials.
4-18-75	Notice of Motion filed to make public any part of the record, etc. and Notice of Motion to proceed in forma pauperis(deft Lucchetti) compelling prosecution to furnish deft with statements written etc. (no return date) retd to Chambers.
4-18-75	Before MISHLER, CH J - case called - deft LUCCHETTI & counsel Allan Lashley present - Elliot Wales relieved as counsel for the deft - Allan Lashley appointed by the court.
4-25-75	Affidavit of ROSE SANTORO (surety) filed and letter dated 4-22-75 filed from H. Elliot Wales, Esq. (received from Chambers & retd after filing as per instructions)
4/28/75	Pro-Se notice of appeal from order of 4/17/75 denying disqualificatior trial judge filed. (LUCCHETTI) (filed in 75CR25)
4/28/75	Docket entries and duplicate of notice of appeal mailed to court of ap
4-29-75	Letter received from Chambers filed (original with request to return to Chambers various motions and requests for documents & Notice of App (previously filed on 4-28 on 75 CR-25) LUCCHETTI

DATE	PROCEEDINGS
4-30-75	Notice of Motion filed for dismissal, Bill of Particulars, etc. ret May 2, 1975 (LUCCHETTI)
5-5-75	Notice of Motion filed for a directed verdict and/or dismissal of the Indictment (Lucchetti) forwarded to Chambers.
5-2-75	Before MISHLER, CH J - case called - deft Lucchetti & counsel Allan Lashley present - hearing on motion to suppress, etc. held - Hearing to be contd on May 5, 75.
5/5/75	Before MISHLER, CH.J.Case called- Deft LUCCHETTI and counsel Allen I Hearing contd from 5/2/75-deft to proceed in the hearing pro se-cour to stand by- Hearing contd to 5/16/75 at 2:00 P.M.
5-6-75	Stenographers transcript filed dated May 5, 1975 (Lucchetti)
5-7-75	Voucher for expert services filed (LUCCHETTI)
5/8/75	Before MISHLER, CH.J.- Case called- Deft LUCCHETTI and counsel prese Hearing contd-application by deft pro se to subpoena 26 witnesses is denied as indicated on the record-hearint contd to 5/9/75 at 10:00 A
5-9-75	Stenographers transcript filed (pgs 225 to 266)Lucchetti.
5-9-75	Before MISHLER, CH J - case called - deft Lucchetti present pro se- counsel Allan Lashley standing by - hearing contd - hearing conclude motion to suppress is denied.
5/12/75	Before MISHLER, CH.J.- Case called- Deft pre se- counsel Mr. Lashley assist deft-Trial ordered and begun-Jurors selected and sworn-Trial to 5/13/75 at 10:00 A.M.
5/13/75	By MISHLER CH.J.- Memorandum of Decision and Order filed denying def LUCCHETTI'S motions to dismiss, for discovery,assistance under C.J. disqualification, etc.
5/13/75	By MISHLER, CH.J.- Memorandum of Decision and Order file denying mot to suppress
5-13-75	Before MISHLER, CH J - case called - deft present pro se - counsel Mr. Lashley to assist - trial resumed - motion by deft for mistrial is granted - court declares a mistrial -Jury discharged - trial concluded - new trial set down for May 19, 1975.
5-14-75	Memorandum filed from Ch.Judge Mishler dated May 13, 1975 setting case for trial on Monday, May 19, 1975 at 2:00 PM.
5-15-75	Voucher for Expert Services filed (Lucchetti) pre trial hearing et
5-15-75	Memorandum filed from Chief Judge Mishler to Hon.Judge Weinstein dated May 14, 1975; Brief summary of proceedings subsequent to the imposition of sentence after trial .
5-16-75	Stenographers transcript filed dated May 13, 1975 (Lucchetti)

DATE	PROCEEDINGS
5-19-75	Before WEINSTEIN J - case called - deft Lucchetti & counsel Allan La: present - defts motion to dismiss the indictment is denied; defts mot to reopen the suppression hearing is granted. hearing ordered re-oper and begun - hearing concluded - defts motion to suppress is denied - Ordered - courts findings read into record - trial adjd to May 20, 19 trial adjd to May 20, 1975.
5-20-75	Before WEINSTEIN J - case called - deft Lucchetti & counsel present - Trial ordered and BEGUN- Jurors selected and sworn - defts applicatic for mistrial is denied - trial contd to May 21, 1975 @ 9:45 am.
5-21-75	Before WEINSTEIN J - case called - deft Lucchetti & counsel present - trial resumed - trial contd to May 22, 1975 @ 10:30 am.
5/22/75	Before WEINSTEIN,J.- Case called- Deft and counsel present- Trial re: Juror not present and excused-Court charges jury- jury retires to de: Jury returns and renders a verdict of guilty as to counts 1,2 and 3- Jury polled- and discharged- Deft's motion to set aside verdict is de deft in custody-sentence set for 5/23/75 at 10:00 A.M.
5/22/75	Stenographers Trascript dated 5/12/75 and 5/19/75 filed
5/23/75	Before WEINSTEIN,J.- Case called- Deft LUCCHETTI and counsel preset- report marked as court ex. #1- Deft satenced to imprisonment for a pe of 20 years on count 2 pursuant to T-18, U.S.C. Sec. 4208(a)(2) and ~~unxcounkx2xpursuantx~~ fined $10,000.00 and 5 years as to count 3 pursu to T-18, U.S.C. Sec. 4208(a)(2) to run concurrent with prison sentenc in count 2 and fined $5,000.00 to run consecutively with count 2 for total fine of $15,000.00 - Count 1 is a lesser crime included within ~~included with sentences imposed~~ counts 2 and 3(credit to be given for time already served)- Deft's motion for reduction of sentence is denied- So Ordered- Court recomme that deft is an extremely dangerous criminal and should be kept incar rated until there is assurance that the public will not be endangered ~~would be protected upon~~ release
5/23/75	Judgment and Commitment filed- certified copies to Marshal(LUCCHETTI)
5/23/75	Notice of motion pursuant to Rule 35 filed (LUCCHETTI)
5/23/75	Stenographers Transcripts dated 5/20/75 and 5/21/75 filed
5/23/75	Notice of appeal filed (LUCCHETTI)
5/23/75	Docket entries and duplicate of notice of appeal mailed to court of a
5-27-75	Voucher for Expert Services filed (LUCCHETTI)
5/28/75	Letter from deft Lucchetti dated 5/24/75 filed-re:request for extenti to file motions pursuant to Rule 29 and 34
5/28/75	By WEINSTEIN,J.- Orde: filed that above request granted(order on botte

CRIMINAL DOCKET

DATE	PROCEEDINGS
	above letter)
5/28/75	Certified copy of Judgment and Commitment retd and filed- deft deli
	to Federal Detention Headquarters(LUCCHETTI)
5/30/75	Stenographers Transcript dated 5/22/75 filed
6/3/75	Copy of Letter to deft Lucchetti from Michael Miele(court reporter
	dated 5/30/75 filed
6-6-75	Voucher for compensation of counsel filed (Allan Lashley, Esq)
6/11/75	Stenographers Transcript dated 4/3/75 filed
6/11/75	Stenographers Transcript dated 3/12/75 filed
6-12-75	Stenographers transcript filed dated March 31, 1975
6-17-75	Stenographers transcript filed dated Jan. 15, 1975
6-18-75	Stenographers transcript filed dated Jan. 22, 1975(forwarded
	with Supplemental Index to Record(relating to companion case
	75 CR-25
6-18-75	Supplemental Index to Record on Appeal forwarded to the C of A
	(Lucchetti -Govts appeal)
6/20/75	Letter from deft Lucchetti dated 6/15/75 filed re:request for exter
	to file motions
6/20/75	By WEINSTEIN,J.- Order filed that motion application to extend time to file motic
	pursuant to Rules 29 and 34 is granted (copy sent to deft and Govt
7/1/75	Letter from deft Lucchetti to chambers dated 6/21/73 filed
7/1/75	Memorandum from Judge Mishler to Allen Lashley dated 4/16/75 filed
7/1/75	Letter from deft Lucchetti to Judge Weinstein and memorandum to Pro
	filed
7/1/75	Letter from H. Elliot Wales to A.U.S.A. O'Brien dated 3/17/75 filed
7/1/75	Letter to Judge Weinstein from deft Lucchetti and reply of Judge
	Weinstein filed
7/1/75	Letter to deft Lucchetti from Probation dept dated 6/3/75 filed
7/1/75	Letter from deft Lucchetti to Probation dated5/25/75 and reply of J
	Weinstein to Probation filed
7/1/75	Letter from deft Lucchetti and reply of Pro Se clerk filed re:dispos
	Rule 35 application
7/1/75	Letter to Philip Brown, esq. from Judge Mishler dated 8/5/71 filed
7/1/75	Letter to Judge Mishler from deft Lucchetti dated 6/19/73 filed
7/1/75	Letter to Judge Mishler from deft Lucchetti dated 6/25/75 filed
7/1/75	Stenographers Transcripts dated 5/2/75 and 5/9/75 filed
7/1/75	Affidavit in opposition to deft Lucchetti's motion to suppress filed

DATE	PROCEEDINGS
7-1-75	Letter from deft Lucchetti filed received from Chambers (Bail remissi application)
7-1-75	By MISHLER, CH J - Memorandum of Decision and order filed denying def motion to remit bail . Copy forwarded to deft as directed. (Order dated June 30, 1975 but received July 1, 1975)
7/1/75	Record on appeal certified and handed to Lisa Griffin for delivery to court of appeals

A TRUE COPY
ATTEST
DATED 7/1 19 75
LEWIS ORGEL
CLERK
BY
DEPUTY CLERK

Form DJ-195
(Ed. 2-7-66)

No. _____

UNITED STATES DISTRICT COURT

Eastern District of New York

Criminal Division

THE UNITED STATES OF AMERICA

vs.

DAVID [illegible], JACK KENNEDY and [illegible],

Defendants.

INDICTMENT

18 USC, SECS(a)(3)
18 USC, SECT 2 and 2

A true bill,

_____
Foreman.

Filed in open court this _____ day

of _____, A. D. 19__

_____
Clerk.

Bail, $_____

EMANUEL A. MOORE GPO 902-482
Assistant U. S. Attorney
556-7212

AVL:EAM:1
F.#715,492

71CR 849

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JUL 20 1971

----------X

UNITED STATES OF AMERICA,

SUPERSEDING INDICTMENT

- against -

Cr. No.
(18 USC, §§2113(a)(d), 371 and 2)

DAVID WILLIAMS, JACK DEMPSY and CHARLES LUCCHETTI,

Defendants.

----------X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 21st day of December 1970, within the Eastern District of New York, the defendant DAVID WILLIAMS, the defendant JACK DEMPSY and the defendant CHARLES LUCCHETTI did unlawfully, willfully and feloniously, by force, violence and intimidation take approximately Twenty Five Thousand Dollars ($25,000.00), in United States currency from the persons and presence of employees of the First National Bank of Bayshore, Community Branch, 340 Howells Road, Bayshore, New York, which money was in the care, custody, control, management and possession of the said First National Bank of Bayshore, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation. (Title 18 United States Code, Section 2113(a); Title 18 United States Code, Section 2.)

COUNT TWO

On or about the 21st day of December 1970, within the Eastern District of New York, the defendant DAVID WILLIAMS, the defendant JACK DEMPSY and the defendant CHARLES LUCCHETTI did

knowingly, wilfully and feloniously, by force, violence and intimidation take approximately Twenty Five Thousand Dollars ($25,000.00), in United States currency from the persons and presence of employees of the First National Bank of Bayshore, Community Branch, 340 Howells Road, Bayshore, New York, which money was in the care, custody, control, management and possession of the said First National Bank of Bayshore, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, an act and offense in violation of Section 2113(a), Title 18, United States Code, and in the commission of this act and offense, the defendant DAVID WILLIAMS, the defendant JACK MURPHY and the defendant CHARLES LUCCHETTI assaulted and placed in jeopardy the lives of the said bank employees, as well as the lives of other persons present, by the use of dangerous weapons. (Title 18 United States Code, Section 2113(d); Title 18 United States Code, Section 2.)

COUNT TWO

On or about and between the 1st day of December 1970 and the 21st day of December 1970, both dates being approximate and inclusive, within the Eastern District of New York, the defendant DAVID WILLIAMS, the defendant JACK MURPHY and the defendant CHARLES LUCCHETTI wilfully and knowingly conspired together and with each other to commit offenses against the United States in violation of Title 18 United States Code, Section 2113(a) and Section 2113(d), by conspiring to take by force, violence and intimidation from the persons and presence of employees of the First National Bank of Bayshore, Community Branch, 340 Howells Road, Bayshore, New York, monies and things of value in the care, custody, control, management and possession of the said First National Bank of Bayshore, the deposits of which bank were then

and there insured by the Federal Deposit Insurance Corporation, and in the commission of said acts and offenses, conspired to assault and place in jeopardy the lives of the said employees of the said First National Bank of Bayshore, by the use of dangerous weapons. (Title 18 United States Code, Section 371.)

In furtherance of said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendant DAVID WILLIAMS, the defendant JACK DEMPSEY and the defendant CHARLES LUCCHETTI, committed the following:

OVERT ACTS

1. The Grand Jury repeats and realleges as Overt Acts each and every allegation contained in Counts One and Two of this indictment with the same force and effect as though fully set forth herein.

A TRUE BILL

_____ FOREMAN

EDWARD R. KORMAN
United States Attorney
Eastern District of New York

United States Court of Appeals

FOR THE

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the twelfth day of June one thousand nine hundred and seventy-two.

Present: HON. IRVING R. KAUFMAN,

HON. PAUL R. HAYS,

HON. JAMES L. OAKES,

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ JUN 22 1972 ★
TIME A.M.
P.M.

Circuit Judges.

United States of America,
Plaintiff-Appellee,

v.

David Williams, Jack Dempsy and
Charles Lucchetti,
Defendants,

Charles Lucchetti,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO,
Clerk

(A true copy,
{ A. Daniel Fusaro Clerk

A 15

Supreme Court of the United States

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ NOV 15 1972 ★
TIME A.M.
P.M.

No. 72-5246

Charles Lucchetti,

Petitioner,

v.

United States

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Second ---------- Circuit.

ON CONSIDERATION of the petition for a writ of certiorari herein to the United States Court of Appeals for the Second ----------Circuit, it is ordered by this Court that the said petition be, and the same is hereby, denied.

November 6, 1972

A true copy MICHAEL RODAK, JR.
Test:
Clerk of the Supreme Court of the United States
By Julian S. Gaya Jr.
Chief Deputy

(19a)

NOTICE OF ENTRY

Sir - Please take notice that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

HENRY J. BOITEL

Attorney for

Office and Post Office Address

233 Broadway

Borough of Manhattan New York, N. Y. 10007

To

Attorney s for

NOTICE OF SETTLEMENT

Sir—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

of the judges of the within named Court, at

on the day of 19

at M.

Dated,

Yours, etc.,

HENRY J. BOITEL

Attorney for

Office and Post Office Address

233 Broadway

Borough of Manhattan New York, N. Y. 10007

To

Attorney(s) for

Index No. Year 19

Docket No. 71 Cr. 849
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs.-

CHARLES LUCCHETTI,

Defendant.

MOTION FOR REDUCTION OF SENTENCE [F.R.C.P. RULE 35]

HENRY J. BOITEL

Attorney for Defendant

Office and Post Office Address, Telephone

233 Broadway

Borough of Manhattan New York, N. Y. 10007

(212) REctor 2-8104

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
☆ FEB 26 1973 ☆
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA :

-vs.- : Docket No. 71 Cr. 849

CHARLES LUCCHETTI, : MOTION FOR REDUCTION OF SENTENCE [F.R.C.P. RULE 35]

Defendant. :

----------X

S I R S :

PLEASE TAKE NOTICE that upon the annexed affirmation of HENRY J. BOITEL, ESQ., attorney for the defendant, CHARLES LUCCHETTI, dated February 23, 1973, and upon all of the proceedings heretofore had herein, the defendant hereby moves the Court for an Order pursuant to Rule 35 of the Federal Rules of Criminal Procedure, reducing the sentence of twenty years imprisonment and $ 15,000 in fines, which were imposed herein on October 15, 1971, by the Hon. Jacob Mishler, and for such other and further relief as to this Court may seem just and proper.

New York, New York
February 23, 1973

Yours, etc.,

HENRY J. BOITEL
Attorney for Defendant
233 Broadway
New York, New York 10007
(212) RE 2-8104

TO: Clerk of the United States
District Court for the
Eastern District of New York

Robert A. Morse, Esq.
United States Attorney
Eastern District of New York

person so served to be the person mentioned and described in said papers as the
Sworn to before me, this day of 19

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA :

-v- : Docket No. 71 Cr. 849

CHARLES LUCCHETTI, : AFFIRMATION IN SUPPORT OF MOTION FOR REDUCTION OF SENTENCE [F.R.C.P. RULE 35]

Defendant. :

----------X

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:.

HENRY J. BOITEL, an attorney duly admitted to practice in the Courts of the State of New York, affirms the following to be true under penalty of perjury, pursuant to Rule 2106 CPLR:

1. I have been the appellate attorney for the above-named defendant, and he has requested that I move this Court on his behalf for a reduction of sentence.

2. The defendant has been convicted in this Court of aiding and abetting the use of a dangerous weapon in the perpetration of a bank robbery (18 U.S.C. §§ 2 & 2113[d]), and of conspiracy to do the same (18 U.S.C. § 371). As to the substantive count, this Court imposed a sentence of imprisonment of twenty (20) years and a fine of Ten Thousand ($ 10,000) Dollars. As to the conspiracy count, this Court imposed a sentence of five (5) years imprisonment and a fine of Five Thousand ($ 5,000) Dollars. The prison terms were made to run concurrently; the fines totalled $ 15,000.

3. An appeal was taken to the United States Court of Appeals for the Second Circuit from the judgment of conviction and the judgment was affirmed without opinion on June

12, 1972. A petition for a writ of certiorari was denied by the Supreme Court of the United States on November 6, 1972.

THE CRIMES CHARGED

4. On December 21, 1970, a car drove up to the Community Branch of the First National Bank of Bayshore, in Bayshore, Long Island, and two persons wearing ski masks entered the bank. One of them exhibited a gun. They directed the bank personnel and customers to lie on the floor, and then hurriedly commenced a search of the premises for money. They exited the bank with a total of $ 25,197.74. Some five months later, David Williams and Jack Dempsey were apprehended during a robbery of the same bank. On or about May 19, 1971, Williams confessed to the December 21st robbery and inculpated the defendant in that robbery. On June 15, 1971, an indictment was filed charging the defendant, Williams and Dempsey, with the December bank robbery and with conspiracy. Within a few days, they were all in custody. The defendant Lucchetti has been in custody ever since his arrest.

5. At the trial, both Williams and Dempsey testified as government witnesses and inculpated the defendant as having been the person who allegedly organized the robbery, although he did not participate in the actual robbery.

FACTORS RELEVANT TO THIS APPLICATION

6. Annexed hereto as Exhibit A is a letter, dated February 8, 1973, which has been written to this Court by the defendant's wife, Barbara Lucchetti. For the convenience of the Court, the contents of that letter are here set forth in full:

"Dear Judge Mishler,

"I am writing this letter con-

cerning my husband, Charles Lucchetti, who was sentenced to twenty years in prison on October 15, 1971, and in hopes that you will take my problem into consideration when his application for a sentence reduction comes before you.

"Charlie and I have been married for eight years, and we both would like to have children very much. Charlie will be 29 years old in April of this year, and I will be 27 years old in March. With his sentence of 20 years, I will be 47 years old, and he, 49 years old. I will be no longer able to bear children, and this fact worries both of us contantly.

"When Charlie and I were first married, we both wanted children, but we decided that we would wait until we could give our children a nice home with a yard for them to play, and all the things children should have. So we both worked and saved our money to buy a house, which we accomplished after three years. Still, we were not able to afford a child and I had to continue to work, and both of us did not want our children raised by babysitters. I wanted to raise my own children and be there when they needed me.

"As of now, we have lost our house, and of course we can't have children until Charlie comes home, and we are able to raise them together.

"Judge Mishler, I miss my husband terribly, and I pray for his safe return. As you know, Charlie was hurt while in jail, and I worry day and night for his safety.

"Please, if you will grant him a sentence reduction, I will be most grateful.

"Sincerely, Mrs. Barbara Lucchetti."

7. Mrs. Lucchetti is employed as a teletype operator for Clark Dodge & Company in New York City, and she earns approximately $ 135.00 per week. Annexed hereto, as Exhibit B, is a statement of her physician, Ronald Baratta, M.D., to the effect that she is under his care for "anxiety neurosis".

8. It is true, of course, that any person who must serve a prison sentence is exposed to the difficulties and dangers of prison life. In the present case, those dangers came to fruition. On July 4, 1971, the defendant wrote to this Court and noted the following:

> "While in the custody of the Bureau of Prisons, I was a victim of an unprovoked assualt while asleep at 6:15 A.M. It has come to my attention that he had a background of mental disturbness [sic]. Due to the overcrowdedness and the neglect of the prison authorities that this inmate should have been placed in segregation. As a result of this attack which the inmate used a razor blade, I received a slash of seven inches on my right side of my face and a cut on my arm. By the grace of God, my arm was covering my throat, and as he came down the side of my face, he continued across the bicep of my arm. Now, after receiving this injury, I was taken to St. Vincent's Hospital where I required thirty-three (33) stitches on the side of my face and ten (10) on my arm.
> * * * "

9. The defendant advises me that, prior to his conviction herein, he had completed his education only through to the seventh grade of grammar school To the degree that it has been possible, he has since participated in the educational programs available to inmates at the Lewisburg Peniten-

tiary. It is his hope to achieve a high school equivalency diploma. He further advises me, that upon this Court's request, the Lewisburg facility will forward to this Court a report concerning his behavior and progress.

10. The defendant advises me that his only conviction prior to the events of this case was in the County Court of Suffolk County in 1969 when he was found guilty of a misdemeanor based upon a charge of reckless endangerment growing out of his operation of a truck. He was sentenced to a year imprisonment and was released after ten months of that time.

11. At the time of the trial herein, another bank robbery charge was pending against the defendant in the County Court of Suffolk County. The defendant has since entered a plea of guilty to possession of a stolen car in satisfaction of that indictment, and he received a sentence of one year to be served concurrently with the sentence imposed in the instant case. The defendant urges this Court to request that the Probation Department of the County Court, Suffolk County, forward a copy of its report to this Court for use in evaluating the instant motion for a reduction of sentence.

12. While, in the main, sentences which are meted out to co-defendants have little meaning with regard to the proper sentence which should be imposed upon a defendant who is before the Court, it is, perhaps, appropriate to note to the Court that the sentences of the co-defendants, who testified in behalf of the prosecution, but who also were the actual bank robbers, and who had histories of prior criminal involvement, were substantially less than the sentence imposed upon the defendant Lucchetti. The defendant Dempsey was sentenced to

a term of imprisonment for a period of five years pursuant to 18 U.S.C. § 4208(a)(2). The defendant Williams received a suspended sentence and was placed on probation for a period of five years. The defendant Lucchetti, as noted above, received an effective sentence of twenty years imprisonment [pursuant to 18 U.S.C. § 4208(a)(2)], and an effective fine of $ 15,000.

13. Taking the age of the defendant, the plight of his wife, and his imprisonment from the date of his arrest herein, as well as all of the other factors noted above into consideration, it is respectfully urged that this Court reduce the sentence heretofore imposed so as to permit Mr. Lucchetti to rejoin his wife and restart his life at an age when both of these occurrences will still be meaningful.

Respectfully submitted,

New York, New York
February 23, 1973

HENRY J. BOITEL
Attorney for Defendant

February 8 1973

Dear Judge Mueller,

I am writing this letter concerning my husband, Charles Lucchetti, who was sentenced to twenty years in prison, on October 15, 1971, and in hopes that you will take my problem into consideration when his application for a sentence reduction comes before you.

Charlie and I have been married for eight years and we both would like to have children very much. Charlie will be 29 years old on April of this year, and I will be 27 years old in March. With the sentence of 20 years, Charlie be 47 years old, and I, 45 years old. I will be no longer able to bear children, and this fact worries both of us constantly.

When Charlie and I were first married, we both wanted children, but we decided that we would wait until we could give our children a nice home with a yard for them to play, and all the things children should have. So we both worked and saved our

money to buy a house which we
accomplished after three years. Still
we were not able to afford a child, and
I had to continue to work, and both
of us did not want our children raised
by babysitters. I wanted to raise my
own children and be there when they
needed me.

As of now, we have lost our house
and of course we can't have children
until Charlie comes home and we are
able to raise them together.

Judge Mackie, I miss my husband
terribly and I pray for his safe return to
you and Charlie we love while in
jail, and I worry beyond might for
his safety.

Please, if you will grant him a
reduction, I will be most
grateful.

Sincerely,

Mrs. Jerri Lucchetti

ANTHONY BARATTA, M. D.
VINCENT BARATTA, M. D.
RONALD BARATTA, M. D.

672 NORTH WELLWOOD AVENUE
LINDENHURST, NEW YORK
TURNER 4-5455

OFFICE HOURS:
BY APPOINTMENT

NAME Barbara Cudeth AGE

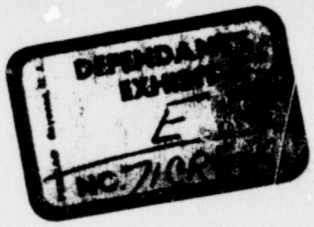
DATE 2/11/71

ADDRESS

℞ The above named is under my care for Anxiety Neurosis.

R Baratta M. D.

AB3428376
AB3428364
AB3 28352



UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA, :

- against - : 71-CR-849

CHARLES LUCCHETTI, :

Defendant. :

----------X

United States Courthouse
Brooklyn, New York

March 2, 1973
10:00 o'clock a.m.

B e f o r e :

HONORABLE JACOB MISHLER,
Chief U.S.D.J.

CRIMINAL MOTION

HENRI LE GENDRE
ACTING OFFICIAL COURT REPORTER

Appearances:

ROBERT A. MORSE, ESQ.,
United States Attorney for the
Eastern District of New York

BY: E. MOORE, ESQ.,
Assistant U.S. Attorney

H. BOITEL, ESQ.,
Attorney for the defendant.

* * * * *

THE CLERK: 71-CR-849, U.S.A. versus Charles Lucchetti.

THE COURT: All right, start talking, Mr. Boitel.

MR. BOITEL: This is an application for reduction of sentence.

As you know, on such an application, I must assume that the facts which were testified to by the Government witnesses at trial were correct, and they show that the defendant advised two other persons as to how they might rob a bank.

Those two persons went and robbed a bank and came back and divided the proceeds of that bank robbery with the defendant.

The two individuals when questioned, testified as Government witnesses having later been apprehended by the Government.

This Court sentenced him to a term of 20 years in prison and levied a $15,000 fine on him.

At the time of these occurrences, the defendant was, I believe, 26 years of age. Since his arrest in this case, which was just at or about the time of the indictment, he has been incarcerated and he remains incarcerated today.

He is married and had lived in Suffolk County

with his wife who stands by him to this day. There is a copy of a letter to this Court included with my motion papers and also reproduced in the text of the motion papers.

I think in sentencing a defendant to 20 years, there is an implicit judgment that a man is incapable of being rehabilitated. I wonder if it's appropriate for a young man of 26 to make that judgment.

In effect, that not only means the spending the remainder of his useful life incarcerated, but it also means having no meaningful relationship with his wife Barbara Lucchetti.

The letter she has written to the Court expresses that.

One of the problems that's involved, I guess, in any incarceration, these two people who have no children will never be able to have any children or is it likely they will ever have any children if he's incarcerated for as long as the sentence of the Court.

I realize that the Probation Department, or rather, the Parole Board, would be able to let him out at an earlier date. We don't know when it is that the Parole Board will let him out; one can assume that the Parole Board is going to do the

proper thing.

In a sense, a 20-year sentence conveys a judgment on the part of the Parole Board by the sentencing Judge.

Under the remaining circumstances indicated in my motion papers, I think it would be appropriate for the Court to reduce sentence from 20 years.

MR. MOORE: May I be heard?

I left a message with your secretary that I would be late, your Honor.

I have been speaking with Mr. Lucchetti and I sent a letter to your chambers during the week that I wish this matter to be put over until after a particular event. My primary reason for that is that Mr. Russo is not apprehended and I look at counsel's motion papers and I think that Mr. Lucchetti hadn't advised him of all of the events in this case.

There is an ongoing investigation that involves some information about Mr. Russo. I understand that they are related.

If Mr. Lucchetti is available, I want to be able to present it to the Court.

THE COURT: It's all right. I'm going to express something that's going to be disappointing to both the United States Government and to Mr.

Boitel.

Under no circumstances will I reduce this sentence. I regard Mr. Lucchetti as one of the most dangerous criminals that ever appeared before me in this courtroom. I don't care if he can give you information that can locate Mr. Russo or not.

If Mr. Lucchetti wants any help at all, he'll go to the Parole Board. I won't help him at all. I think it's most unfortunate that the wife has to suffer. I think our society would be safer if they keep Mr. Lucchetti behind bars. I wouldn't want to have him as my neighbor.

MR. MOORE: The only reason I said that, Judge, Mr. Lucchetti had wanted me to advise your Honor of this event. I wanted to make sure I mentioned it.

THE COURT: I don't want to deceive Mr. Lucchetti or Mr. Boitel. Whatever help you give to the Government won't help him one featherweight here; If he thinks it's going to help him.

Let him appeal to the Parole Board and let him tell you if the Parole Board asked my opinion as to my sentencing, I remember the name Lucchetti because I remember how that bank robbery happened.

MR. BOITEL: Thank you, your honor.

MR. MOORE: Thank you, your Honor.

(Whereupon, Court stood in recess for the day in this matter.)

* * * * *

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

CHARLES LUCCHETTI
Petitioner

-against-

NOTICE OF MOTION

UNITED STATES OF AMERICA
Respondent

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

PLEASE TAKE NOTICE that the undersigned petitioner shall move, upon the annexed affidavit, the annexed petition for writ of habeas corpus and upon all proceedings herein precedent before the Hon. Jacob Mischler, one of the Judges of the United States District Court, within and for the Eastern District of New York, on the 1 day of Aug, 1974 at 9:00 o'clock in the forenoon, or as soon thereafter as he may be heard, in the United States Courthouse, for an order disqualifying said Justice Mischler from ruling or deciding in the matter of the annexed petition for writ of habeas corpus and for such other and further relief as to this Court may seem just and proper.

Yours, etc.,

Charles Lucchetti

Charles Lucchetti
Petitioner, Pro Se
P.O. Box 1000
Lewisburg, Pennsylvania

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

CHARLES LICCIARTI
Petitioner

-against-

UNITED STATES OF AMERICA
Respondent

AFFIDAVIT
IN SUPPORT OF MOTION
FOR DISQUALIFICATION OF JUDGE

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

CHARLES LICCIARTI, being duly sworn, deposes and says:

1. I am the petitioner in the above entitled action.

2. Petitioner is currently confined at Lewisburg Prison by virtue of a judgement of conviction, following a trial by jury, upon two counts of Indictment #71 CR 849, rendered in the United States District Court for the Eastern District of New York on October 15, 1971, Hon. Jacob Mischler presiding. Petitioner is currently serving concurrent terms of twenty years and five years.

2. Petitioner appealed the aforesaid judgement of conviction to the Court of Appeals for the Second Circuit. Judgement was affirmed on June 12, 1972, with no opinion.

3. Certiorari to the United States Supreme Court was denied on November 6, 1972.

4. On , 1974, petitioner submitted petition for writ of habeas corpus, pursuant to Title 28, U.S.C., Section 2255. (Copy of petition for writ of habeas corpus annexed as exhibit "A". Copy of proof of service annexed as exhibit "B".)

5. Petition for writ of habeas corpus alleges, inter alia, that petitioner's conviction was unconstitutional in accordance with the mandates of Giglio v. U.S., 405 U.S. 150, inasmuch as newly discovered evidence suggests strongly that the trial judge was aware that the Government's chief witness against the petitioner at the time of trial, lied when he stated under oath that no promises had been made to him by the Government in exchange for his testimony.

6. Petitioner further alleges that in view of the points raised in the annexed petition for writ of habeas corpus, that the trial judge is an indispensable and necessary witness in all proceedings hereinunder.

7. In the evnt that an evidentiary hearing is granted relevant to the petitioner's allegations it is the intention of the petitioner to call the trial judge as a witness.

WHEREFORE, petitioner prays that an order issue assigning this case to a judge other than Hon. Jacob Mischler for the holding of an evidentiary hearing, and for ruling further in any matter pertaining to this petition, and for such other and further relief as to this Court may seem just and proper.

Respectfully submitted,

Charles Lucchetti

Charles Lucchetti
Petitioner, Pro Se

Sworn to before me this
22nd day of July, 1974

Anthony D'Elia
FDR, NY

AUTH
IO A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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CHARLES LUCCHETTI
Petitioner

-against- WRIT OF HABEAS CORPUS

UNITED STATES OF AMERICA

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THE PRESIDENT OF THE UNITED STATES OF AMERICA
TO: UNITED STATES MARSHAL and the WARDEN OF LEWISBURG PRISON and/or whomsoever may have the custody of the body of Charles Lucchetti.

Greeting:
YOU ARE HEREBY COMMANDED that you have the body of Charles Lucchetti, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever names he is called or charged, before one of the Judges of the United States District Court, within and for the Eastern District of New York, on the day of , 1974 at 9:00 o'clock in the forenoon, or as soon thereafter as he may be heard, in the United States Courthouse, Room , to do and receive all and singular those things which shall then and there be considered concerning the said Charles Lucchetti, and have you then and there this writ.

WITNESS, Hon. , Judge of the United States District Court for the Eastern District of New York, this day of , 1974.

Clerk of the United States
District Court for the
Eastern District of New York

The foregoing writ is hereby allowed this day of , 1974.

United States Distrcit Judge

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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CHARLES LUCCHETTI
Petitioner

-against-

UNITED STATES OF AMERICA
Respondent

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO TITLE 28, U.S.C.
SECTION 2255

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CHARLES LUCCHETTI, being duly sworn, deposes and says:

1. Petitioner is currently confined at Lewisburg Prison by virtue of a judgment of conviction, following a trial by jury, upon two counts of Indictment #71 CR 849, charging violations of Title 18, U.S.C., Section 2113 and Title 18, U.S.C., Section 371, rendered in the United States District Court for the Eastern District of New York on October 15, 1971, Hon. Jacob Mischler presiding. Petitioner is currently serving concurrent terms of twenty years and five years.

2. Petitioner appealed the aforesaid judgement of conviction to the Court of Appeals for the Second Circuit. Judgement was affirmed on June 12, 1972, with no opinion.

3. Certiorari to the United States Supreme Court was denied on November 6, 1972.

4. The grounds on which petitioner maintains that his continuance in custody is unlawful are as follows:

A. There is sufficient evidence to indicate that the chief Government witness against the petitioner lied at the time of trial when he stated that he had received no promises from the Government in exchange for his testimony against the petitioner.

B. Newly discovered evidence raises a strong probability that the trial judge knew that the Government's chief witness against the petitioner lied under oath regarding promises in exchange for his testimony.

FACTS

On December 21, 1970, a car drove up to the Community Branch of the First National Bank of Bayshore, in Bayshore, Long Island, and two persons wearing ski masks entered the bank. One of them exhibited a gun and hurriedly commenced a search of the premises for money. They exited the bank with a total of $25,197.74. Some five months later David Williams and Jack Dempsey were apprehended during a robbery of the same bank,

which took place on May 13, 1971. Both Williams and Dempsey confessed to the May 13 robbery as well as the December 21 robbery, and both made statements inculpatory of the petitioner which resulted, first, in his arrest on May 13, 1971 for the robbery on that date, and which subsequently led to his indictment for the December 21 robbery.

On May 17, 1971, Dempsey was arraigned in Suffolk County Court and charged with the May 13 robbery. At that time, for the record, he stated that he wished to withdraw certain statements of an inculpatory nature which he had previously made concerning the petitioner. He further stated that the petitioner had no connection with either the May or December robberies and that the previous inculpatory statements which he had made were at the behest of State and Federal officials who had coerced him by making certain threats directed against his family.

From the time of this arraignment until the commencement of the trial of the petitioner, Dempsey was incarcerated at the Suffolk County Jail in Riverhead, New York. Trial of the petitioner commenced on August 2, 1971. At the trial the two chief Government witnesses were Williams and Dempsey. Indeed, in his charge to the jury, the presiding justice went as far as to charge that, "The Government's main witnesses were Jack Dempsey and David Williams. The Government's case obviously rests on their testimony."

On cross-examination Dempsey testified as follows:

"Q: Now what are the circumstances of your appearance here today?

A: To testify on my own free will. (From T.T., annexed as Exhibit "A", 8/3/71, p.50)

Q: A deal was made, wasn't it, Mr. Dempsey?

A: No.

Q: A promise was given to you?

A. No. (Exhibit A, p.51)

.....

Q: No offers were made in exchange for your testimony?

A: No.

"Q: You were not granted any leniency?

A: No.
(Exhibit A, p.52)

.....

Q: Now, at any time were you offered a package deal for all matters pending against you including the ones in Suffolk and the one here in Brooklyn?

A: No, Sir.

Q. Never?

A: Never.

Q: You were promised a minimum of 5 years to encompass all these outstanding cases against you?

A: No."
(Exhibit A, p.56)

Dempsey further testified (Exhibit A, p. 58, et seq.):

1. That he had previously stated that the petitioner had nothing to do with the crime.

2. That his previous confession was untrue.

3. That he had previously lied under oath.

4. That he had previously lied to his attourney.

5. That he had not yet pleaded to the indictment, now severed from the trial of the petitioner, for which the petitioner was standing trial.

Subsequent to the conviction of the petitioner, Dempsey was permitted to plead guilty to one count of Conspiracy relating to the Federal indictment and some three weeks later pleaded guilty in Suffolk County to Attempted Robbery in the Second Degree in full satsifaction of the State indictment relating to the May 13, robbery.

In taking the plea in Federal Court, the Court enquired as follows: (U.S. v. Dempsey, Minutes of October 1, 1971, annexed as Exhibit "B", p. 11)

THE COURT, Have any promises of any kind, including promises or suggestions to what sentence will be imposed, been made to you by your lawyer or the United States Attourney

or the Court or anyone else to induce a plea of guilty?

THE DEFENDANT: No, Sir.

THE COURT: I assume that a promise was made at the time of sentencing counts one and two would be dismissed?

THE DEFENDANT: No, it was mentioned to me by my lawyer, that was all, your Honor.

THE COURT: Anything else promised to you?

THE DEFENDANT: No, Sir. "

At his arraignment for pleading on October 20, 1971, in Suffolk County Court, Dempsey affirmed that the judge in the State case had promised to run the State sentence concurrent with any Federal sentence. The following colloquy then took place:

"THECOURT: And any other than that promise has anybody else made any promises to you to induce you to change your plea?

THE DEFENDANT: No, Sir.

THE COURT: Has any promise been made to you by the district attourney, your lawyer, the clerk of the court, or anyone connected with this court?

DEFENDANT: No."

(Exhibit "C", N.Y. v. Dempsey, Minutes of October 20, 1971, p.9)

Thus on at least 3 separate occasions: the trial of the petitioner, the arraignment of Dempsey in Federal Court, and the arraignment of Dempsey in Suffolk County Court, Dempsey testified that he had received no promises or representations from the Federal Government in exchange for his testimony.

However, at the time of the petitioner's trial, Dempsey admitted that he had been questioned at the Suffolk County Jail by an agent on July 21, 1971 (Exhibit A., p. 51, line 4) and that he had answered questions put to him (idem., line 6). He further admitted to making statements to a Federal agent prior to petitioner's trial (idem.,p. 52, line 11); that his bail in Suffolk County had been reduced from $50,000 to $5000 for no explicable reason (idem, p.53, line 15, et seq.); that he had been brought to the U.S. Courthouse in Brooklyn on June 14, 1971 at which time he had a conversation with the U.S. Attourney handling the prosecution of the petitioner (idem., p.55, lines 7-8); that he had been brough to Federal Court on at least two separate occasions

or conversations and meetings relevant to the case at bar (idem., p.33, line 21) nd that on the last occasion on which he had been brought to Federal Court he had ecided to "cocperate with authorities" (idem., p.73, line 8).

ARGUMENT

t is submitted hat:

. There is sufficient suggestion on the face of the record to indicate that Dempsey ied when he stated that he had received no promises in exchange for his testimony.

. Evidence newly discovered by the petitioner proves conclusively that Dempsey ied regarding Government promises in exchange for his testimony.

. Newly discovered evidence raises a strong possibility that the trial judge knew - t the ver least - after the fact, that Dempsey lied under oath regarding Government romises in exchange for his testimony.

OINT I - THERE IS SUFFICIENT EVIDENCE ON THE FACEOF THE RECORD TO INDICATE THAT EMPSEY LIED WHEN HE STATED THAT HE HAD RECEIVED NO PROMISES IN EXCHANGE FOR HIS ESTIMONY.

n relation to Dempsey's testimony at the trial of the petitioner, the record stablishes the following:

. He admitted lying previously under oath.

. He had previously made inculpatory statem nts regarding the petitioner which he ater recanted under oath and then proceeded to inculpate the petitioner at the time f trial.

. His bail was drastically reduced for no apparent reason.

. The primary charges against him were dropped, despite the fact that he was apprehended n the course of committing one bank robbery and confessed to committing another, and e was permitted to plead guilty to a substantially reduced charge in State court.

. The primary charges were dropped againsthhim in Federal Court, despite the fact that e was apprehended in the course of committing a bank robbery; he was permitted to lead guilty to what amounted to a technical charge.

f. Dempsey was taken from jail to the U.S. Courthouse on at least three separate occasions before the trial of the petitioner.

g. On at least one of these occasions he met face to face, by his own admission, with the U.S. Attourney prosecuting the petitioner.

h. The cases of Dempsey and Williams were severed from that of the petitioner before trial as a result of the issuance of a superceding indictment which facilitated such severance.

The questions raised by the above facts are numerous, but can be condensed as they lead to a common conclusion: Is it reasonable to assume that Dempsey, a self-confessed perjurer succeeded in having his bail drastically reduced, met with agents and prosecutors on a number of occasions, was permitted to plead to substantially reduced charges, all without a quid pro quo ?

In the case at bar, the record is even clearer and more revealing than in Reagor v. U.S. (Opinion dated July 6, 1973, 5th Cir., no cit.) In Reagor, the chief Givernment witness also denied under oath that any promises of consideration had been given. However, the appellate court remanded for an evidentiary hearing on the identical issues raised in "d" and "f" above.

It is submitted that the record herein exceeds the requirements set forth in Reagor. It is significant to note in relation to the issue of timeliness that the Court held in Reagor, "Reagor's petition is not barred because of the failure to raise this question on direct appeal since...the decision in Giglio was not rendered until after the direct appeal was disposed of." (Reagor v. U.S., supra., at 4). The Court further added that "contested fact issues in 2255 cases must be decided on the basis of evidentiary hearings." (Reagor v. U.S., supra, at 5).

POINT II - EVIDENCE NEWLY DISCOVERED BY THE PETITIONER PROVES CONCLUSIVELY THAT DEMPSEY LIED WHEN HE DENIED GOVERNMENT PROMISES IN EXCHANGE FOR HIS TESTIMONY.

Recently, the petitioner came into possession of the minutes of sentencing of

Jack Dempsey in Federal Court (Minutes of January 7, 1972, U.S. v. Dempsey, annexed as Exhibit "D"). It is well to note that the same Justice sentenced both the petitioner and Dempsey, and thus was completely familiar with all proceedings precedent. After imposing a sentence of 5 years upon Dempsey, Justice Mischler stated, "So I am saying that you are getting every consideration the court can give for your testimony and for the help you have given consistent with our theories of rehabilitation. I just want you to know that the United States Attourney has fulfilled his promises (emphasis supplied)." It is submitted that this statement alone warrants, at the very least, an evidentiary hearing in accordance with the criteria enunciated in Reagor (supra.)

Petitioner further submits four affidavits:

1. Affidavit of Salvatore Ganci (Exhibit E)
2. Affidavit of George Balboa (Exhibit F)
3. Affidavit of Bobby Townsend (Exhibit G)
4. Affidavit of Pasquale DellaSanta (Exhibit H)

Each of these affiants was incarcerated with Dempsey in the Suffolk County Jail, and each of these affiants swears that he had conversations with Dempsey during which Dempsey stated that promises had been made to him by the Government in exchange for his testimony and that these promises included assurences concerning the maximum sentence which he would receive.

It is submitted that the above is more than satisfactory of the requirements set forth in Giglio v. U.S., 405 U.S. 150, under which a new trial would be mandated in view of the newly discovered facts as set forth herein.

POINT III - EVIDENCE SUGGESTS THAT THE TRIAL JUDGE WAS AWARE, AT THE VERY LEAST, AT THE TIME OF DEMPSEY'S SENTENCING, THAT DEMPSEY HAD LIED REGARDING PROMISES MADE TO HIM BY THE GOVERNMENT.

Justice Mischler's statement on sentencing Dempsey (Exhibit D, p. 8) that, "I just want you to know that the United States Attourney has fulfilled his promises", after sentencing Dempsey on a substantially reduced charge to 5 years

in prison, certainly raises the question as to what "promises" are referred to. That such promises alluded to Dempsey's reward for testimony seems certain by the facts, conditions and statements adduced above; by the sentence which Dempsey received; by the concurrency of State and Federal sentences and the fact that the Government did not protest the illegality of the State sentence; and by Judge Mischler's own, seemingly inadvertant, but highly suggestive, remarks. It is further submitted that the proceedings herein would never have been initiated if the need for them had been obviated by Justice Mischler, himself, who, in the interests of justice, should have ordered, sua sponte, a new trial, inasmuch as he knew full well that the Government had made promises to Dempsey. (c.f. Giglio, supra.)

CONCLUSION

The face of the record more than complies with the rquirements set forth in Reagor (supra.) for an evidentiary hearing regarding petitioner's contentions. The minutes of sentencing of Dempsey and the annexed affidavits fully comply with the requirements for a new trial as set forth in Giglio. Dempsey's credibility as a witness was a vital issue in the Government's case, especially since he had already recanted an earlier inculpation of the petitioner, and therefore a new trial would be warranted under U.S. v. Kahn, 472 F 2d (2 Cir., 1973) and U.S. v. Polisi, 416 F 2d (2 Cir., 1969).

WHEREFORE, petitioner prays this court for an order requiring a new trial of the petitioner or in the alternative an evidentiary hearing to determine the facts as set forth in this petition, and further prays for an order directing the Attourney General of the United Statrs to submit response to this petition within twenty (20) days of receipt thereof, and for such other and further relief as to this Coirt may seem just and proper.

Sworn to before me this
2nd day of July, 1974.

Respectfully submitted,

Charles Lucchetti

Charles Lucchetti, Pro Se

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"AUTHORI
TO

TABLE OF APPENDICES

PPENDIX A

.S. v. Lucchetti, Trial Transcript, pp. 50-73, 8/3/71

PPENDIX B

.S. v. Dempsey, Arraignment for Pleading, p. 11, 10/1/71

PPENDIX C

eople of the State of N.Y. v. Dempsey, Arraignment for Pleading, p. 9, 10/20/71

PPENDIX D

.S. v. Dempsey, Sentencing Minutes , pp. 7-8, 1/7/72

PPENDIX E

ffidavit of Salvatore Ganci

PPENDIX F

ffidavit of George Balboa

PPENDIX G

ffidavit of Bobby Townsend

PPENDIX H

ffidavit of Pasquale DellaSanta

PPENDIX I

. v. Dempsey, Arraginment, 5/17/71, pp. 2-6

Q So the first time this was mentioned was at Charles Lucchetti's house?

A The second time it was mentioned.

Q The first time was in the automobile?

A Yes.

Q And it was just in passing? No details?

A No.

Q No instructions.

A No.

Q And the second time it occurred at Charles Lucchetti's house?

A Yes.

Q Now, what are the circumstances of your appearance here today?

A To testify on my own free will.

Q I see. You are doing this voluntarily?

A Yes.

Q Did anyone visit you in the Suffolk County Jail to interrogate you?

A No.

Q No?

A No.

Q Weren't you visited in the Suffolk County Jail by an agent?

A Once. To ask questions.

Q When was that?

A Last week. Monday, I think.

Q And did you answer the questions put to you?

A Yes.

Q And as a result of that, did you decide to come in here and testify?

A This was before he came out to see me.

Q I see. And then a conference was set up with Mr. Moore?

A No.

Q A deal was made, wasn't it, Mr. Dempsey?

A No.

Q A promise was given to you?

A No.

Q You just came in here and said -- You told Mr. Moore that you just wanted to testify in the case without any promises at all?

A No, my counsel -- my appointed lawyer at the time advised me to cooperate with the federal government.

Q I see.

You are on this indictment as a defendant, though?

A Yes.

Q You are charged equally with Mr. Lucchetti

in this, aren't you?

A Yes.

Q No offers were made in exchange for your testimony?

A No.

Q You were not granted any leniency?

A No.

Q Now, in connection with this incident, you have made statements to police officers?

A One Federal agent.

Q And when was that?

A It was on a Monday.

Q How long ago?

A Last week some time.

Q And were you questionned by the Suffolk County Police Department in connection with it?

A No.

Q Were you harassed in any way?

A No.

Q Were you -- Did you suffer a beating in jail?

A A few months ago, before this crime happened.

THE COURT: A few months ago, before the crime happened?

THE WITNESS: Before this crime was even taking place.

THE COURT: You mean before December 1970?

THE WITNESS: No, after that. After it was --

THE COURT: You mean before the indictment was returned?

THE WITNESS: It was around April.

THE COURT: April of this year?

THE WITNESS: Yes.

THE COURT: You were beaten up in jail?

THE WITNESS: Yes.

Q Now, Mr. Dempsey, bail was originally fixed on you in Suffolk County for $50,000, wasn't it?

A Yes.

Q Then after you talked to some police investigators, the bail was then reduced to $5000, wasn't it?

A Excuse me. Repeat that.

Q Wasn't the bail reduced to $5000 after you talked to certain police officers?

A No, I did not talk to no police officer.

My attorney, Mr. Keesner, got a bail reduction for me.

Q But it was after you saw certain police officers, wasn't it?

A No, sir.

Q Did you speak to Mr. Majori of the District Attorney's office in Suffolk County?

A No, sir.

Q Did you speak to any Assistant District Attorney in Suffolk County?

A No, sir.

Q Did you appear before the Grand Jury in Suffolk County?

A No, sir.

Q Now, on May 14, wasn't bail set on you for $50,000?

A Yes.

Q And on June 2, didn't an FBI agent visit you in the Suffolk County Jail?

A No.

Q And also on June 11, 1971?

A No, sir.

Q No?

A No, sir.

Q When did you appear before the Grand Jury?

A A week ago before last.

Q Now, isn't it a fact that on June 14, you were brought into Brooklyn to be questionned?

A Yes.

Q That was on June 14?

A June 14, a Monday.

Q Did you speak to Mr. Moore on that occasion?

A I was introduced to Mr. Moore.

Q Weren't you shown certain documents on that occasion?

A No, sir.

THE COURT: Documents being any paper.

THE WITNESS: No, all they said, they had me for a bank robbery. That was all.

Q And were you shown any Grand Jury testimony on that occasion?

A No. Not on June 14.

Q Later?

A Yes.

Q When?

A I can't remember.

Q Was it this month, or was it the month of July?

A Yes.

Q And they showed you Grand Jury testimony?

A They didn't actually come out and showed me it. It was hand to my counselor. And he read it and he gave it to me to read.

Q After that, you were returned to the Suffolk County Jail?

A Yes.

Q You had not formalized a statement or given a statement as a result of the interview with Mr. Moore?

A I was told that I was being brought up for arraignment and everything and it never took place. This was in June.

Q Now, at any time were you offered a package deal for all matters pending against you, including the ones out in Suffolk and the one here in Brooklyn?

A No, sir.

Q Never?

A Never.

Q You were promised a minimum of 5 years to encompass all these outstanding cases against you?

A No.

Q Has it been your experience where you have made statements to the police under threats by them --

MR. MOORE: Objection, your Honor.

THE COURT: If you don't understand

the question, you can say so.

THE WITNESS: I don't understand it.

THE COURT: The witness says he doesn't understand the question.

Q In the past, Mr. Dempsey, when you have been involved with the law, have you signed confessions that weren't true?

MR. MOORE: Objection, your Honor.

THE COURT: Overruled. I will allow it.

Do you know what a confession is? A confession of guilt?

THE WITNESS: Yes.

THE COURT: Did you admit your guilt when you were not guilty?

THE WITNESS: No.

Q You never did? Has it been your experience to go back into Court in front of a Judge and to say, "Judge, I want to recant and change my statement because it wasn't true --"

THE COURT: Objection sustained.

Now, you asked this witness whether he ever made a confession that wasn't true.

Now, that is a term of art. And now

you are using the term statement and I would like you to call it to this witness' attention that it is something entirely different. A statement may be exculpatory, but a confession never is.

Isn't that true, Mr. Rohl?

MR. ROHL: Yes, that is true.

THE COURT: All right, and now put the question.

Q Did you ever go before a Court and try to recant or pull back a confession that you had made previously that wasn't true?

A Yes.

Q Isn't it a fact that you stated to a Court and on the record that there was pressure, that your family was threatened by the police and that is why you implicated other people in those statements? Isn't that true?

A I didn't say my family was threatened. I re-state that Charles Lucchetti had nothing to do with a crime.

Q You said that in a courtroom on the record, didn't you?

A Yes.

Q You said that a confession that you had made previously implicating him wasn't true? You said that

didn't you?

A Yes.

Q And what was the reason you had signed that confession implicating Charles Lucchetti? What did you tell the Court?

A Because the police officers got my wife upset.

Q Now, were you telling the truth when you told that to the Court?

A Yes.

Q And at the time you signed your confession previous to that, that you recanted and wanted it set aside, everything in that confession was true?

A The first statement?

Q Yes.

A Yes.

Q You knew that you took an oath?

A Yes.

Q And you lied in that?

A What you mean by lying?

Q Well, under oath when you raised your hand and swore that everything is true and took an oath, and it is not true and know it is not true, that is lying.

A Well, Mr. Rohl, that has nothing to do with this. I am not on trial for false statements before.

Q I know that, Mr. Dempsey.

I am just saying that you have lied under oath before, haven't you?

A The first time, yes.

Q Now, Mr. Dempsey, in our interview that was taped, the tape recording machine was in front of you, visible?

A Yes.

Q This was a statement given to me voluntarily?

A Yes.

(continued on following pages.)

Q Was everything in that recorded session between you and me -- was everything in that true?

A No.

Q You lied?

A Yes.

Q Are you telling the truth today?

A Yes.

MR. ROHL: I have no further questions.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. MOORE:

Q Mr. Dempsey, you said you lied to Mr. Rohl?

A Yes.

Q Why did you lie to Mr. Rohl?

A Because I wanted to -- in other words, why involve another person that wasn't even caught on the scene of a crime that was planned by the man.

Q Was that concerning the bank robbery on December 21, 1970?

A No. This involves an attempted bank robbery in May of 1971.

Q So when you had a conversation with Mr. Rohl, you did have a conversation with him

concerning the bank robbery of December 21, 1970?

A NO.

Q Was there any conversation with Mr. Rohl concerning that bank robbery?

A He came to see me on my request about a bank robbery that was done in December and all I told him that as far as I know it didn't happen on that date. But I looked back and it did happen on the date of December 21st. And that I was going to stand mute until my counsel advised me to cooperate with the Federal government.

Q Was Mr. Rohl your attorney at that time?

A Mr. Rohl was the attorney on one of my cases that I had out in Riverhead.

Q Mr. Rohl was not your attorney on the bank robbery of December 21, 1970?

A No.

Q Did he ever represent you on that particular occasion?

A No.

THE COURT: You say Mr. Rohl did represent you in another matter?

THE WITNESS: Yes.

THE COURT: When he came out to

Suffolk County, he came out to see you on that other matter?

THEWITNESS: Well, uh --

THE COURT: Just yes or no.

THE WITNESS: No.

Q You stated that you were beaten up in jail?

A Yes.

Q Who beat you up?

A Two homicide detectives from the Fourth Precinct.

Q Was that concerning the bank robbery of December 21, 1970?

A No. They wanted some information. They picked me up for a crime and --

Q Let me ask you this: Was it concerning another case?

A Yes.

Q Totally unrelated to the bank robbery of December 21, 1970?

A Yes.

Q Did you ever speak to the Suffolk County Police Department concerning the bank robbery on December 21, 1970?

A Never.

Q You spoke to the Federal Bureau of Investigation, however, is that correct?

A Yes.

Q Did you ever plead guilty to any reduced charge from the bank robbery on December 21, 1970?

A No.

Q So you know you can be prosecuted for this particular bank robbery; is that correct?

A Yes.

THE COURT: But you didn't plead to the superseding indictment, did you? You didn't plead one way or the other?

THE WITNESS: I don't understand what you mean by pleading to the superseding indictment.

THE COURT: I want a concession in the light of your questioning, Mr. Moore.

MR. MOORE: I will concede, your Honor, that Mr. Dempsey did not plead guilty or not guilty to the superseding indictment.

THE COURT: And the arraignment was postponed at the request of the Government? Isn't that correct?

MR. MOORE: That is correct, your Honor.

BY MR. MOORE:

Q Mr. Dempsey, Mr. Rohl questioned you about your lying in court and making false statements in court.

A Yes.

Q Is that concerning another case, other than the bank robbery on December 21, 1970?

A That involves another case of 1971.

Q Was the FBI involved in that particular case?

A No.

Q Let me ask you this, Mr. Dempsey: Did you ever speak to Mr. Lucchetti concerning this bank robbery after you were in jail?

A No.

Q Did you ever speak to him just prior to your going to jail concerning the bank robbery on December 21, 1970?

A No.

Q Mr. Dempsey, why did you recant your confession to the court in Suffolk County?

A Because when we were locked up we were sent to

Riverhead. And when we were in Riverhead first before we were being sent to our regular floor, Charlie sent word down to me what happened and I explained to him, and he told me that Mr. Rohl will be there to see me either Saturday or Sunday. And to help him out.

Q To help who out?

A To help Charles Lucchetti out.

Q Was that the Saturday the interview?

A An interview on the case in Riverhead, yes.

Q So Charlie Lucchetti wanted you to help him out?

A Yes.

Q Did he ask you to recant the story --

THE COURT: Do y0u know what recant means?

THE WITNESS: Change the story.

THE COURT: All right.

Q Did Charlie Lucchetti ask you to recant your testimony?

A In a way he did, like in other words he told me --

Q What did he say?

A He said don't worry. He was going to take care of everything, you know, just say that he had nothing to do with it.

Q And you told that to the Court?

A No. I told the Court that he had -- in other words, he didn't have nothing to do with it.

Q I see.

After you went to Court, did you subsequently speak to Mr. Rohl?

THE COURT: Did you speak to Mr. Rohl before you went to court?

THE WITNESS: I spoke to him after we went to Court. After I rechanged my statement.

He came in on a Sunday morning and saw me with a tape recorder. That is when I gave him a story on the tape recorder.

Q And what did you tell Mr. Rohl at that time?

A That Charles Lucchetti had nothing to do with the attempted bank robbery.

Q Did you know at that time when you spoke with Mr. Rohl that Mr. Rohl represented Charlie Lucchetti?

A Yes, I knew he represented Charles Lucchetti on the case out there.

Q Did Charlie Lucchetti tell you that

Mr. Rohl was going to see you with a tape recorder?

A He told me that Mr. Rohl would be seeing me at some time during the weekend.

Q Did you ever see Mr. Rohl prior to that occasion?

A A few times. Quite a few times before that.

Q Did he ever have a tape recorder on those occasions, prior to the time you had the interview with him?

A Do you mean on the other times?

Q Yes.

A As far as I know, no.

Q So that was the only time that Mr. Rohl had a tape recorder; is that right?

A Yes.

Q Did Mr. Rohl tell you on that particular occasion that he had spoken to Charlie Lucchetti?

A He told me that he had spoken to Charlie Lucchetti and that they were supposed to get me a lawyer for that case there.

Q Now, was Mr. Rohl going to get you a lawyer for your case?

A No, not Mr. Rohl. Charlie Lucchetti said don't worry, that he would get me a lawyer to

represent me, because at that time I didn't have no lawyer.

Q When Mr. Rohl spoke to you --

MR. MOORE: I withdraw that.

Q At the time that you spoke to Mr. Rohl on that Saturday, were you telling Mr. Rohl the truth?

THE COURT: Objection sustained.

Q Did you ever see Mr. Rohl after that Saturday interview?

A Do you mean the Sunday interview?

Q Yes, the Sunday interview.

A I think once before after that interview.

Q Did he have a tape recorder with him on that occasion?

A No.

Q Did Mr. Rohl ever represent you in any litigation now pending out in Suffolk County?

A He is supposed to represent me on a case out in Riverhead.

Q You now know that he is representing Charlie Lucchetti?

A Yes.

Q Now Mr. Dempsey, you spoke about a second crime out in Suffolk County --

THE COURT: The Jury may be excused.

(The Jury was thereupon excused from the Courtroom at 3:55 o'clock p.m.)

THE COURT: I will take an offer of proof.

MR. MOORE: Yes, your Honor.

THE COURT: Do you know why I sustained objection to that other question?

MR. MOORE: As to the other crime?

THE COURT: No. As to whether the confession was true or whether the recantation was true.

MR. MOORE: He is supporting his own credibility.

THE COURT: It is proof of prior similar crimes. I think it was proper to go as far as you did only because Mr. Rohl asked questions about the recantation.

MR. MOORE: Well, I would like to get a ruling from the Court on the particular approach that I would like to take.

THE COURT: All right.

MR. MOORE: Your Honor, there was a subsequent crime. The same bank was

robbed by Mr. Dempsey, Mr. Williams and Mr. Luc[illegible]i on May 13, 1971.

I believe that when Mr. Rohl [illegible] a few questions about another crime, I think he has opened the door now to a subsequent similar act which is now pending in Suffolk County. And the Government should have the right to ask Mr. Dempsey now what was that crime and who he was involved with.

THE COURT: I think prior similar crimes fall in the same category as subsequent similar crimes.

MR. MOORE: There is a question of proximity of time, your Honor.

(continued on following page)

Reel 4

THE COURT: Well, United States against Deaton. I have one on my desk that just came down this past week in the Second Circuit.

I won't allow it at this time. If you offer it at another time, and if the defendant puts in a defense, in light of the testimony that goes in, if it is offered again, I may allow it. But at this time the answer is no.

Seat the jury.

(The jury thereupon returned to the courtroom.)

J A C K D E M P S E Y, called as a witness, having been previously been duly sworn, resumed the stand and testified further as follows:

REDIRECT EXAMINATION

BY MR. MOORE (continued):

Q Mr. Dempsey, do you recall how many times you were brought to this court in the last two months?

A Twice.

Q Do you recall the purpose for which you were brought in?

A The first one I don't know, but the second one was to talk to my lawyer. I should say I was here

three times. Excuse me.

Q Mr. Dempsey, when did you decide to cooperate with the federal government?

A After I talked to my attorney.

Q How long ago was that?

A The last time I was brought to the federal court.

Q Do you recall how many times -- how long ago that was?

A July. Some time around July.

Q A few weeks ago?

A Yes.

MR. MOORE: I have no further questions.

MR. ROHL: No further questions.

THE COURT: Next witness, Mr. Moore.

MR. MOORE: Your Honor, may the Jury be excused for a few moments?

THE COURT: You may be excused for a few moments.

(The Jury thereupon retired from the courtroom.)

THE COURT: When I said the United States against Deaton I think I ought to give you the citation. It is 331 F.2d 114, Second Circuit (1967), and recently cited in United

Exhibit B
U.S. v. Dorfman, 10/1/71

THE COURT: Have any promises of any kind, including any promises or suggestions as to what sentence will be imposed, been made to you by your lawyer and the United States Attorney or the Court or anyone else to induce a plea of guilty?

THE DEFENDANT: No, sir.

THE COURT: I assume that a promise was made that at the time of sentencing, counts one and two would be dismissed?

THE WITNESS: No, it was mentioned to me by my lawyer, that that was all, your Honor.

THE COURT: Yes.

Anything else promised to you?

THE DEFENDANT: No.

THE COURT: Are you pleading to count 3 voluntarily and of your own free will because you are guilty, and for no other reason?

THE DEFENDANT: Yes, sir.

THE COURT: Have you discussed your plea of guilty with your attorney?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you know the maximum sentence which may be imposed is a prison term of 5 years and a fine of $10,000?

BY THE CLERK:

Q Jack Dempsey, as to Indictment Number 611-71, do you understand English?

A Yes.

Q Have you discussed your case with your lawyer?

A Yes.

Q Did you hear your lawyer offer to withdraw your plea of not guilty and offer to plead you guilty to attempted robbery in the second degree as to the first count, in full satisfaction of Indictment Number 611-71?

A Yes.

Q Has any promise been made to you to induce this plea by the district attorney, your lawyer, the clerk of the court or anyone connected with this court?

A No.

Q Other than as stated on the record?

A No.

Q Are you pleading guilty of your own free will?

A Yes.

Q Do you know that your plea of guilty is an admission that you committed the crime to which you now plead guilty?

Exhibit D
U.S. v. Dempsey, 74-1a.

the commencement of the sentence.

I will further write the Bureau of Prisons a letter and make certain they understand the substantial help that Mr. Dempsey has given. If possible, to see that he gets on the right road, even give him a little education, try to train him for something worthwhile, keep their eye on him and then when they feel that he's on the right road, to release him at the earliest time, the earliest possible time.

The "earliest possible time," you know, Mr. Dempsey, doesn't mean tomorrow or the next day. It means try to see if you can do a rehabilitative job on Mr. Dempsey, because with me, when someone turns on his criminal associates and says "I'm through with you," that means that he can't have contact with them so that to me this is the most effective assurance that he won't.

It doesn't always work but it's one of the real assurances.

Now, to me that's the first long step in the rehabilitative process. Normally, in the offense of this kind, I was thinking of twelve to

fifteen years. So I'm saying that you are getting every consideration the court can give for your testimony and for the help you have given and consistent with our theories of rehabilitation.

I just want you to know that the United States Attorney has fulfilled his promises. I have carefully weighed it and I felt this was the best I could do and I felt that if you're willing to really become and want to become a good citizen, just normal working citizen, earning your keep, have a family, take your place in society and give up all the other ideas of quick, easy money, the government is ready to put at your doorstep the means to do it. That's all. There is education available. There are work programs available. There are work-release programs.

I don't promise you any of this. I just tell you it's available.

THE DEFENDANT: Yes, sir.

THE COURT: There are programs where you come home to the penitentiary, correctional institution. You go out to work. That usually

Exhibit E

Nov. 18, 1971

TAKE NOTICE that I, Salvatore Ganci Sr. being duly sworn according to law, depose and say under penalty of perjury that I, Salvatore Ganci under present incarceration at 432 West St. New York, N.Y. say in the below statement all facts are truly given and to the best of my knowledge.

On November 8, 1971. I was transferred to Suffolk County Jail, housed on the same tier on the fourth floor with one Jack Dempsey who had occupation of the adjoining cell.

During my incarceration at Suffolk County I had several conversations with Jack Dempsey almost all being centered on his own [illegible] In the course of conversation, Dempsey had told me he had lied against Charles Luchetti.

He had told me a certain deal had been offered him that would be allowed to plead guilty to a lesser charge and accept a 5 year maximum sentence in exchange for his testimony and that time now being faced by him for the state would be run concurrently with the Federal time.

Again I state that I have full knowledge of the law concerning false swearing and false statements.

"AUTHORIZED BY THE ACT OF JULY 7, 1955 TO ADMINISTER OATHS (28 U.S.C. 4004)".

Subscribed and sworn before me [illegible]

this ___ day of November 1971 [illegible]

Respectfully

Salvatore Ganci Sr.

AFFIDAVIT

I, George Balbos 79042, after being duly sworn deposes and says:

I make this Affidavit for Charles Luchetti. In the month of ~~June~~ July, 1971 I was incarcerated in the Suffolk County Jail in Riverhead LongIsland. During my period of incarceration there I had discussions with Jack Dempsey. In the month of ~~June~~ July I was transferred from the Suffolk County Jail with Jack Dempsey by u.s. marshalls to the eastern district courthouse, and while housed in the bullpens at the u.s. courthouse at 225 Cadmen Plaza I had a conversation with Jack Dempsey at which time he told me that the u.s. attorney had offered him 5 years for his case pending in that court and that they would make arrangements for him to receive current sentences for charges pending in the state court if he testified against one Charles Luchetti.

I am presently housed at federal house of detention on an outstanding federal charge. The conversations abovementioned took place in the month of ~~June~~ July, 1971.

Respectfully,

George Balbos

79042 158

Balbos, DCH Cadman.
Federal Detention Hdq.
N.Y.C.

"AUTHORIZED BY THE ACT OF JULY 7, 1955
TO ADMINISTER OATHS (18 U.S.C. 4004)".

Affadavit

4/10/72

Take notice that I Bobby Jaunsend being duly sworn, deposes and says under penalty & perjury, that:

While incarcerated at the Suffolk Cty. Jail, Riverhead, New York. That I was housed on the same tier as Jack Dempsey, and that during conversations with him about his case he told me that he had been offered a sentence of 5 years by the U.S. Attorney in return for his testimoney against his co-defendent Charles Lucchetti, and that in forther consideration for his testimoney he was also promised that the sentence he would receive in the case pending in Suffolk County Court would be made to run concurrent with the Federal sentence

I again state that I have full knowledge of the law governing false swearing and false statements

Bobby Jaunsend

Sworn to before me this 10th day of April 1972

Stanley J. Regula

Notary

STANLEY J. REGULA
NOTARY PUBLIC, STATE OF NEW YORK
No. 52-8524425 Suffolk County
Commission Expires March 30, 1974

A 78

Exhibit H

Exhibit H

State of New York)
) ss.
County of Suffolk)

Dated Jan. 18-1971

Pasquale D'Elicerta swearing this his own affidavit by affixing his fingerprint for notary purposes deposes and says:

That on July 20, 1971, I was transported from the United States Penitentiary, Lewisburg, Pennsylvania, to the Suffolk County Jail, Riverhead, Long Island for the purpose of being a defense witness for a criminal prosecution pending within that jurisdiction.

Upon my arrival at the Suffolk County Jail I was housed in the 2nd floor of the jail referred to as "South Wing" and placed in a cell occupied by Jim Colon and Michael DeLeo. Also in the same part of the jail and same tier did not occupy the same cell as Colon, DeLeo and myself were Jack Dempsey. The same Jack Dempsey awaiting trial on the Federal Contempt charges and being a co-defendant of said

Accurate.

Jack Dempsey on many occasions would discuss with Cohen, DeToie and myself his problems and concerns relating to his upcoming criminal proceedings in the Federal Court. It is my understanding that Dempsey confided in Cohen, DeToie and myself because he felt we were mature understanding men and could [illegible] him in a decision he had made [illegible] his indictment proceedings. Dempsey had stated to Cohen, DeToie and myself that he had been offered a deal of no more than five years in prison with excellent chance of [illegible] on his testimony and cooperation by the United States Attorney and/or his assistant handling his criminal proceedings and that Dempsey must testify before the Grand Jury and at time of trial in order for the Government deal to be kept.

Jack Dempsey had also related to Cohen, DeToie and myself that he was informed by the U.S. Attorney handling his proceedings that David Williams co-defendant in the same related criminal matter was offered a deal of 5 years probation for his testimony and cooperation and that Williams did accept the

Government exhibit.

Tempany had also related to Cohen, Futelle and myself that he could not do a long presentation and that he was concerned for his wife and family. Furthermore to say that he had spoken for Charles Luchetti and that if Williams was going to testify for the Government they shouldn't be and to relieve himself of the severe consequences of which he was facing.

Your affiant Pasquale DeLeonardis was held in custody at the Suffolk County Jail during the periods of July 20, 1971 to September 16, 1971 for the aforementioned purposes and this his affidavit of personal knowledge to any and all interested parties.

S/ Pasquale DeLeonardis

Duly affirm in full awareness of the penalties for perjury that all matters set forth in this my affidavit are true and correct to the best of my knowledge, information and belief. Further affixing my fingerprint to legally protect myself wherever it may be called and required.

Pasquale DeLeonardis

DISTRICT COURT OF SUFFOLK COUNTY
FIRST DISTRICT : HAUPPAUGE

PEOPLE OF THE STATE OF NEW YORK,

- against -

JACK DEMPSEY,

Defendant.

Index No. 3994A/71

ADJOURNMENT

Att. Robbery 1st
110 & 160.15-2 P.L.

Hauppauge, New York
May 17, 1971

B E F O R E :

HON. ROCKWELL D. COLANERI
Judge, District Court

APPEARANCES:

HON. GEORGE J. ASPLAND
District Attorney
Suffolk County
Veterans Memorial Highway
Hauppauge, New York
BY: HOWARD BAKER, ESQ.
Of Counsel, For the People

JAMES D. SAVER, ESQ.
Legal Aid Society
44 Fifth Avenue
Bay Shore, New York
BY: THOMAS P. CULLEN, ESQ.
For the Defendant

KENNETH K. ROHL, ESQ.
42 Fire Island Avenue
Babylon, New York
For defendant Lucchetti

REPORTER: Anthony J. Allone

MR. DEMPSEY: Your Honor, I'd --

MR. CULLEN: Wait, see what they say first.

MR. BAKER: They are all related.

MR. ROHL: For the record, they are not related. I represent Lucchetti.

THE COURT: You mean they are not related by blood?

MR. ROHL: Factually or legally.

THE COURT: I have the matter of Jack Dempsey. Are you ready for the felony exam today?

MR. BAKER: People are not ready.

MR. CULLEN: We are ready.

THE COURT: Why aren't the People ready?

MR. BAKER: This was a very late arraignment on Friday. It was not on our calendar or even in the Court's calendar. We were not advised or prepared.

THE COURT: Today is Monday. How about tomorrow?

MR. BAKER: I ask for another day

if I could, until the 19th.

THE COURT: All right, Wednesday, the 19th, for felony exam.

MR. DEMPSEY: Before I'm released from the Court back to my cell, I'd like to change my statement on Charles Lucchetti, that he didn't have anything to do with it.

THE COURT: I don't want to listen to you now. Suppose you talk to your lawyer. Nothing is going to happen today.

MR. ROHL: I have represented and I still, as a matter of record, represent this defendant on another felony that predates the charges before the Court at this time. This defendant has signed two statements that are inconsistent with each other. The second one was linking my client, Mr. Lucchetti with the affair, and, speaking with this defendant, it would be a matter of record he wants to recant the second statement, and stay

with the first statement and I ask permission of this Court amicus curiae, to allow him to make some statement with respect to a signed statement that he has made which involves my client, Mr. Lucchetti.

THE COURT: You're not quite amicus curiae, are you?

MR. ROHL: No, sir.

THE COURT: I don't have any statements here.

MR. BAKER: It seems that any statements to be made, if there are in fact any statements which I have no knowledge of at this time, would be matter of proof and would be --

THE COURT: He wants to recant or retract his statement. He can do that. Today is not the day to do that. If we are not going to have a hearing today, today is not the day.

MR. ROHL: He wanted to make a statement.

MR. CULLEN: On the record.

THE COURT: Let him mkae the statement for the record and the minutes can be ordered and so forth. What do you have to say?

MR. DEMPSEY: Charles Lucchetti didn't have nothing to do with this. They said they would give me low bail, less time, just to --

THE COURT: Who is "they"?

MR. DEMPSEY: The police officers that arrested me.

THE COURT: Low bail?

MR. DEMPSEY: And if I would turn Charles Lucchetti in and plus they got my family upset and everything so at the time I didn't know what I was saying to them, but now I do and I want to withdraw my second statement to the police.

THE COURT: All right, so you've made your statement.

MR. ROHL: Thank you, Your Honor.

THE COURT: May 19th for felony

exam.

C E R T I F I C A T I O N

I, ANTHONY J. ALLONE, hereby certify that the foregoing is a true, accurate and correct copy of an adjournment held in the matter of People of the State of New York against JACK DEMPSEY, defendant, held before HON. ROCKWELL D. COLANERI, a Judge of the District Court, Suffolk County, on May 17, 1971.

Anthony J. Allone

Official Court Reporter

17th day of May, 1971.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the within moition(s) PLACED in a sealed envelope , was mailed through the UNITED STATES MAILS, AT the FEDERAL DETENTION HEADQUARTERS, 427 WEST STREET NEW YORK NEW YORK 10014. to

ONE COPY (1)

United States Attorney
Eastern District of New York

Dated July 22 1974

Signed Charles Lucchetti
Pro Se

- Affidavid Of Mailing -

Charles Lucchetti, being duly sworn, deposes and says that on the below indicated date he duly handed to the United States Parole Officer or his direst designate a (n) MOTION, of which the within is a true cópy, for mailing same , pastage prepaid, to

ONE COPY (1)

United States Attorney
Eastern District of New York

Sworn to before me this 22nd day of July 1974

Charles Lucchetti
Affiant

Anthony [illegible]
FDH NY

AFFIDAVIT OF PERSONAL SERVICE

ura Santora, being duly sworn, depose and say that this day I have
ted personal service upon the Clerk of the Court of the United States District
for the Eastern District of New York one original and two copies of each of
ollowing:

tition for Writ of Habeas Corpus

tice of Motion for Disqualification of Judge

fidavit in Support of Motion to Disqualify Judge

fidavit of Persoanl Service

pleadings each being encaptioned Charles Lucchetti v. United States.

tness thereto I set my hand this day of July, 1974.

Laura Santora
Affiant

n to before me this day
uly, 1974.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - -

74 C 1093

CHARLES LUCCHETTI,

Petitioner,

-against-

Memorandum of Decision and Order

UNITED STATES OF AMERICA,

Respondent.

December 16, 1974

- - - - - - - - - - - - - - - - -

Petitioner moves to vacate the sentence imposed on October 15, 1971. /1

FACTS

On May 13, 1971, Jack Dempsy and David Williams were apprehended during a bank robbery of the Community Branch of the First National Bank of Bayshore. Soon after their arrest, Dempsy and Williams confessed to the armed

---

/1 The court sentenced petitioner to a term of 20 years and a fine of $10,000 on Count 2 (18 U.S.C. §2113(d)) and a term of five years and a fine of $5,000 on Count 3 (18 U.S.C. §371); the prison terms to run concurrently and the fines to be cumulative in the total amount of $15,000. Count 1 (18 U.S.C. §2113(a)) was dismissed when the jury found defendant guilty of the graver offense.

FPI 853 3-17-72—30M—9153

robbery of the same bank about five months earlier on December 21, 1970, at which time they escaped with the sum of $25,197.74. Both Dempsy and Williams implicated the petitioner, Charles Lucchetti, as the individual who planned the robbery and drove the switch car. Lucchetti, Dempsy and Williams were indicted on June 17, 1971 for the December 21, 1970 armed bank robbery (71 CR 611). Lucchetti was tried for this robbery on a superseding indictment which also charged Dempsy and Williams.(71 CR 849). Immediately prior to the trial, Demsy's and Williams' cases were severed. Lucchetti's trial commenced on August 2, 1971. At the trial Dempsy and Williams testified for the government.

Williams testified that on December 18, 1970, he and Dempsy stole the car that was to be used in the robbery. After the robbery, Williams stated that Dempsy met Lucchetti "approximately a mile down the road" where Lucchetti was waiting in a silver colored Buick Riviera.

Dempsy testified that Lucchetti initiated discussions concerning the robbery and selected the bank. Dempsy further stated that on the morning of the bank robbery, he and Williams first went to Lucchetti's house where Lucchetti gave Williams a 38 caliber revolver. At that time, Lucchetti

FPI—853—3-17-72—30M—6153

told Williams and Dempsy that a box at the bank contained more than $100,000. Lucchetti also indicated a location on the parkway where he would rendezvous with them after the robbery. According to Dempsy's testimony, Lucchetti then drove them to the stolen getaway car. Dempsy described the robbery, meeting Lucchetti at the designated spot and turning over the proceeds of the robbery to Lucchetti. He also testified that Lucchetti gave him and Williams about $5,000 each and retained the rest.

On cross-examination Dempsy was asked the circumstances under which he appeared as a witness. He stated that he was present "[t]o testify on my own free will." In the interrogation Dempsy was asked whether any promises had been made to him, whether any offers were made to him in exchange for his testimony and whether he had been granted any leniency. To each question Dempsy responded, "No."[2]

---

[2] Dempsy's testimony concerning his motive for testifying was brief:

Q Now, what are the circumstances of your appearance here today?

A To testify on my own free will.

Q I see. You are doing this voluntarily?

FPI 853 3-17-72—30M—9153

12 continued:

A Yes.

Q Did anyone visit you in the Suffolk County Jail to interrogate you?

A No.

Q No?

A No.

Q Weren't you visited in the Suffolk County Jail by an agent?

A Once. To ask questions.

Q When was that?

A Last Week. Monday, I think.

Q And did you answer the questions put to you?

A Yes.

Q And as a result of that, did you decide to come in here and testify?

A This was before he came out to see me.

Q I see. And then a conference was set up with Mr. Moore?

A No.

Q A deal was made, wasn't it, Mr. Dempsy?

A No.

Q A promise was given to you?

A No.

PPI-883 3-17-72-30M-9153

12 continued

Q You just came in here and said -- you told Mr. Moore that you just wanted to testify in the case without any promise at all?

A No, my counsel -- my appointed lawyer at the time advised me to cooperate with the federal government.

Q I see.

You are on this indictment as a defendant, though?

A Yes.

Q You are charged equally with Mr. Lucchetti in this, aren't you?

A Yes.

Q No offers were made in exchange for your testimony?

A No.

Q You were not granted any leniency?

A No.

FPI—8S - 3-17-72 - 30M - 9153

PROCEEDINGS AGAINST DEMPSY AND WILLIAMS

After Lucchetti's trial, on October 1, 1971 Dempsy pleaded guilty to Count 3 of the indictment (18 U.S.C. §371). At that time, though responding in the negative to the court's questions as to whether any promise was made to him, he acknowledged that his lawyer had mentioned that Counts 1 and 2 would be dismissed. After his plea of guilty was made and accepted by the court, Dempsy advised the court that on October 18, 1971, he intended to plead guilty to the state court charge stemming from the May 13, 1971 bank robbery. He further volunteered ". . . that the judge in Riverhead is going to run my time concurrent with the federal crime."

David Williams pleaded guilty to Count 3 on a subsequent date. On January 7, 1973, the court suspended the imposition of sentence on Williams and placed him on probation for a term of five years. On the same day, the court sentenced Jack Dempsy to a five year maximum term under 18 U.S.C. §371, and directed that it be served pursuant to 18 U.S.C. §4208(a)(2). After the sentence was imposed the court stated to Dempsy:

> "I just want you to know that the United States Attorney has fulfilled his promises."

In making this statement the court was simply pointing out

that any promises made to Dempsy obviously had not included a promise that he would receive less than the maximum sentence. There was nothing in the statement to indicate that the court was aware of any promise made to Dempsy other than to dismiss Counts 1 and 2. Nor was there anything in the statement to indicate that the court believed that any promise was made to Dempsy prior to the time he took the witness stand.

This statement is the basis for charging the undersigned with participating in a bargain for Dempsy's testimony. This statement also formed the basis of a motion for disqualification of the undersigned in the determination of the petition.[13] A transcript of the complete sentencing procedure of Jack Dempsy on January 7, 1972 is appended to this memorandum of decision.

THE PETITION

In addition to the claim that the court participated in a bargain for Dempsy's testimony, the petition (as expanded by petitioner at the time of hearing) also alleges:

[13] The court denied petitioner's motion for disqualification (memorandum of decision and order dated August 29, 1974).

FPI—SS—3-17-72—30M—9153

(1) that the government promised Dempsy a five year prison term on the federal charge and a concurrent sentence on the state court charge; (2) that Dempsy committed perjury when he stated that no promises were made to him by the United States Attorney; and (3) the United States Attorney failed to correct the testimony and/or disclose the terms of promises of leniency and concurrency of sentence to defendant or his counsel.

In its memorandum of decision of August 29, 1974, the court directed that a hearing on the matter be held on October 25, 1974, and appointed John C. Corbett, Esq., to represent the petitioner. By letter dated September 5, 1974, the petitioner declined appointment of counsel and emphatically expressed his desire to proceed pro se. Nevertheless, the court directed Mr. Corbett to be present and assist the petitioner in the conduct of the hearing.

THE HEARING

Dempsy denied ever discussing his case with any inmate of the Suffolk County Jail or any place else. Dempsy further stated that he never told anyone that he made a deal with the government for his testimony (Tr. page 11). He denied that any government official offered him or promised

FPI-88-3-17-72-30M1-9153

him any deal in exchange for his testimony (Tr. page 11), prior to the time he testified at the trial, i.e., August 3, 1971. He further testified that he was first aware that the charge to which he pleaded carried a maximum sentence of five years after he testified at the Lucchetti trial (Tr. page 42).

Finding no evidence to sustain it, the court dismissed the petition but indicated that a formal order would be entered upon making findings of fact and conclusions of law. In the process of writing a memorandum of decision incorporating its findings and conclusions, the court discovered a communication from Assistant United States Attorney Gary A. Woodfield to petitioner's assigned counsel, John C. Corbett. This letter, dated September 5, 1974, directed Mr. Corbett's attention to a notation made by an associate counsel of the Legal Aid Society concerning his client, Jack Dempsy. Because this notation related directly to the issue raised by the petition, [4] the court immediately contacted Mr. Corbett. Mr. Corbett advised the court that he

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[4] The note said the following:

> " △ will P.G. to Conspiracy. Sentence will be after Suffolk County Case and Long & Moore will put in a recommendation for light Sentence & Concurrency."

FPI—S3—3-17-72—30M—9153

had received this information, but had never communicated it to the petitioner.

The court reopened the hearing and directed Simon Chrein, associate counsel of the Legal Aid Society, who represented Dempsy at the time he pleaded guilty and who made the notation, to appear for examination on November 1, 1974. At the hearing Mr. Chrein testified that on July 19, 1971, he had a discussion with Special Agent Dan Long of the F.B.I., in which Mr. Long revealed that the government had identification witnesses who would point the defendant out as one of the perpetrators of the bank robbery. Following receipt of this information, Chrein discussed the evidence with Dempsy who indicated that "he would like to possibly work out an accommodation with the government." Mr. Chrein was unable to fix the date that the entry set forth in footnote four was made. He could not say with any degree of certainty whether the note referred to his understanding of the situation as of July 19th, or a later date. His recollection was that on July 19th, 1971, the discussion with Mr. Long was not in Dempsy's presence.

Petitioner Lucchetti refused to cross-examine Mr. Chrein, claiming surprise because he had only recently re-

ceived the information concerning the note on the Legal Aid file. The court continued the proceeding to Monday, November 4, 1974. On that date, the petitioner again refused to conduct cross-examination of Mr. Chrein, on the ground that he had not been supplied with a transcript of Mr. Chrein's testimony of November 1, 1974.

The government then called former Assistant United States Attorney Emanuel Moore. Mr. Moore testified that he spoke with Mr. Chrein on July 20, 1971 and that prior to that time he had never spoken to Mr. Dempsy. Moore said that on July 20, 1971, he related the substance of the government's case against Mr. Dempsy to Mr. Chrein. Thereafter, on the same day, Mr. Chrein called Mr. Moore to advise him that Mr. Dempsy was ready to cooperate. Mr. Chrein asked Mr. Moore what consideration the government would give for Mr. Dempsy's cooperation. Mr. Moore testified that in the presence of Mr. Long, he responded that the matter would have to be discussed with Mr. Lombardino, the Chief of the Criminal Division, and that he would not take it up with Mr. Lombardino until after the trial. Moore indicated that the decision was Mr. Lombardino's and he would do nothing more than recommend that Mr. Dempsy plead

FPI 53-3-17-72-30M-9153

guilty to a lesser offense—possibly the conspiracy charge (18 U.S.C. §371).

Mr. Moore testified that at this point Mr. Dempsy agreed to cooperate with the government. Moore stated that on this day, July 20, 1971, he spoke directly with Mr. Dempsy for the first time, just prior to offering his testimony to the grand jury. In reviewing the testimony Dempsy was to give the grand jury, Mr. Moore told Mr. Dempsy (not in the presence of Mr. Chrein) that his cooperation would be made known to the sentencing judge. Mr. Moore did not speak about this case with Mr. Chrein again until August 2, 1971, the date the trial started. There was no further discussion between them concerning the disposition of the charges against Dempsy. Mr. Moore did not again speak with Dempsy until August 3, 1971 when he prepared Dempsy for trial. There was no discussion with Dempsy at that time concerning any disposition of the charges against him.

The testimony of Mr. Long varied somewhat from that of Mr. Moore. Mr. Long testified that the conversation which Mr. Moore said he had with Mr. Chrein on July 20, 1971, actually took place on July 8, 1971 and was with Mr. Edward Kelly (associate counsel of the Legal Aid Society), not Mr.

FPI 89-3-17-72-30M-9153

Chrein. Mr. Long did recall a conversation that Mr. Moore had with Mr. Chrein in his presence in which Mr. Moore stated that the government was interested in obtaining Dempsy's testimony. Mr. Moore also related the government's belief that Dempsy and Williams had been manipulated by Lucchetti, and that Kenneth Rohl, Esq., Lucchetti's attorney who represented Mr. Dempsy in a state court matter, might very well use this relationship to inculpate Dempsy and Williams and exculpate Lucchetti. Long testified that Moore told Chrein that he could not make any final offer or final commitment; that all he could promise was that he would call Dempsy's cooperation to Mr. Lombardino's attention, and to the attention of the Suffolk County District Attorney's office.

Similarly, Long testified that when Moore interviewed Dempsy immediately prior to placing him before the grand jury on July 20, 1971, he told Dempsy that " . . . he could not make any final promises to him in connection with the ultimate disposition of this case, and that the only thing he could make any commitment to was that if Dempsy did agree to testify, he would call Dempsy's cooperation to the attention of the Suffolk County District Attorney's office,

who had the outstanding indictment against Dempsy in connection with the attempted armed robbery of May 13, 1971." The only other discrepancy in the testimony of Moore and Long is that Moore denied any conversation with Kelly on July 8, 1971, the date Dempsy interposed a plea of not guilty.

FINDINGS OF FACT

1. That on July 20, 1971, Assistant United States Attorney Emanuel Moore caused Dempsy to be transported to the United States District Courthouse from the Suffolk County Jail.

2. In the presence of Special Agent Dan Long, Moore advised Chrein that he had evidence which indicated that Lucchetti mastermined the bank robbery and that Dempsy and Williams were less culpable than Lucchetti.

That if Dempsy cooperated and testified before the grand jury and later testified at the trial charging Lucchetti with armed bank robbery, Moore would make the cooperation known to the sentencing judge and would also recommend to the Chief of the Criminal Division that Dempsy be permitted to plead to the conspiracy count in the indictment (Count 3). Moore indicated further that Dempsy's cooperation would be made known to the District Attorney of

Suffolk County, who was in charge of the state court prosecution against Dempsy, and that an effort would be made to see that Dempsy's state court sentence ran concurrently with the federally imposed sentence.

3. Moore cautioned Chrein that this offer was subject to the approval of Assistant United States Attorney Lombardino, Chief of the Criminal Division, and that approval would not be sought until after the trial.

4. On the same day, i.e., July 20, 1971, Chrein advised Dempsy of his conversation with Moore and told Dempsy that the offer was subject to Lombardino's approval and that such approval would not be sought until after Dempsy had testifed at Lucchetti's trial.

5. Based on the representations made by Moore to Chrein, Dempsy agreed to testify before the grand jury.

6. Prior to appearing before the grand jury on July 20, 1971, Moore advised Dempsy that there were no promises except that his cooperation would be made known to the sentencing judge and to the District Attorney of Suffolk County. Chrein was not present during this interview.

7. Dempsy did not intentionally answer falsely to the questions concerning the understanding he had with

the government (see note 2).

9. Assistant United States Attorney Moore did not believe that the answer to the questions concerning the understanding between the government and Dempsy (see note 2) would be prejudicial.

10. Assistant United States Attorney Moore knew, or should have known, that Dempsy's answers to the questions concerning the understanding between him and the government were false.

DISCUSSION

The petitioner failed to show that Dempsy intentionally lied when he testified that he received no promises, that no offers were made in exchange for his testimony, that he was not granted any leniency, and that he did not make a deal with the government. Dempsy could well have interpreted Moore's statements as being mere representations, which did not rise to the level of promises. He could not be expected to understand the significance of his failure to reveal the existence of the understanding he reached with the government and the bearing it could have in the mind of the jury on his motive for giving testimony. The

same cannot be said for Mr. Moore. We must expect and demand of the prosecution that it understand its obligations, and comply with them voluntarily. These obligations include a duty to reveal any and all representations, promises or conversations with the witness or his counsel, which are reasonably related to the witness' credibility and his motivation for testifying. In this case Moore may not have fully realized his obligation. Moore's good faith, however, is not the issue. The only question is whether the testimony was false and whether Moore realized it to be false.

In Napue v. People of the State of Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 1177 (1959), the Court articulated the affirmative duty of the prosecution to correct the false testimony given by a prosecution witness at a trial. It said:

> ". . .[I]t is established that a conviction obtained through the use of false evidence, known by representatives of the State, must fall under the Fourteenth Amendment [citations omitted]. The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears [citations omitted]."

Napue cited with approval, People v. Savvides, 1 N.Y. 2d 554, 557, 154 N.Y.S. 2d 885, 887 (1956) wherein it was stated:

"It is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon defendant's guilt. A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth . . . . That the district attorney's silence was not the result of guile or a desire to prejudice matters little, for its impact was the same, preventing, as it did, a trial that could in any real sense be termed fair."

The government's case depended almost entirely upon the testimony of Dempsy,[15] ". . . and evidence of any understanding or agreement as to a future prosecution would be relevant to his credibility and the jury was entitled to know of it." Giglio v. United States, 405 U.S. 150, 154, 92 S.Ct. 763, 766 (1972).

The government's obligation goes beyond revealing to the defense finalized deals made with key government witnesses. It has been held that "[t]he failure of the

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[15] It is difficult to understand why Williams' testimony was so brief at trial and why he wasn't called by the government at the hearing. Petitioner's failure to call Williams can be attributed to his total ignorance of what was required and his obdurate refusal to accept the proffered assistance of counsel. The burden of proof in the attack on the conviction rests with petitioner, Williams v. United States, 481 F.2d 339 (2d Cir. 1973). The court feels that petitioner sustained the burden through the witnesses the government called at the court's direction.

PPI 683-3-17-72 30M-9153

government to disclose to the defense and to the trial jury the existence of plea bargaining negotiations with a key witness deprives a defendant of Fifth Amendment due process of law. (citations omitted)." United States v. Fontenot, 483 F.2d 315, 325 (5th Cir. 1973) (underscoring supplied). To the same effect, see United States v. Cawley, 481 F.2d 702, 706 (5th Cir. 1973).

The petition is granted. The judgment is vacated and defendant is granted a new trial, to commence on January 20, 1975. Bail, originally fixed in the amount of $75,000 is continued and it is

SO ORDERED.

U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
MAR 11 1975
TIME A.M.
P.M.

UNITED STATES OF AMERICA,

-against-

CHARLES LUCCHETTI,

Defendant.

INDICTMENT #71CR 849
INDICTMENT #75 CR 25

OMNIBUS MOTION FOR DISCOVERY AND INSPECTION, SUPPRESSION, AND DISMISSAL AS TO BOTH INDICTMENTS

S I R:

PLEASE TAKE NOTICE that upon the annexed affidavits of H. ELLIOT WALES and CHARLES LUCCHETTI, and upon the grand jury testimony of CHARLES LUCCHETTI, on October 19, 1972, the undersigned will apply to this Court, before Chief Judge Jacob Mishler, at a date, time and place to be set by the Court, for appropriate orders of discovery and inspection, suppression, and dismissal, as provided by Rules 6, 12, 16, and 41 of the Federal Rules of Criminal Procedure, as to both indictments 71 CR 849 and indictment 75 CR 25, as to the following items, and in the following respects:

A DISCOVERY AND INSPECTION

1. Written or recorded statements or confessions made by the defendant, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government;

2. Copies of transcripts of all grand jury appearances by the defendant LUCCHETTI before the grand jury;

3. The results or reports of scientific tests or experiments made in connection with the particular case, or copies thereof, including, but not

(31)

limited to the laboratory reports and finger print reports, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known to the attorney for the government;

4. Copy of any search warrant or arrest warrant;

5. Copies of any relevant wire tap statements, orders or transcripts; in this regard we reserve the right to apply further to the Court in the event there is any non-conformity and non-compliance with the relevant wire tap and eves tapping statutes;

6. The date, time and place of the arrest of the defendant;

7. State whether anything was seized from the person of the defendant at the time or after his arrest.

B SUPPRESSION AS TO THE USE OF THE TRANSCRIPT OF THE GRAND JURY TESTIMONY OF THE DEFENDANT ON OCTOBER 19, 1972, OR ANY PARTS OF IT

Defendant requests an order of suppression preventing the United States Attorney from using any portions of the said grand jury testimony as to the trial of either indictment, on the following grounds:

1. At all times during the period including October 1972, defendant was represented by counsel, namely, HENRY BOITEL, ESQ., 233 Broadway, New York, N. Y., 10007, on his appeal from the judgment of conviction in indictment #71 CR 849, and in his petition for a writ of certiorari to the Supreme Court of the United States from the judgment of the Court of Appeals affirming the conviction;

2. Assistant United States Attorney Emanuel Moore promised defendant Lucchetti that the government would never use the transcript of the grand jury testimony as against the defendant Lucchetti, but that the sole use of the grand jury transcript, and the testimony contained in it, would be used solely in connection with any prosecution against Kenneth Rohl.

C DISMISSAL AS TO INDICTMENT 75 CR 25

Defendant requests an order dismissing indictment 75 CR 25, on the following grounds:

1. There was an unnecessary and illegal delay of almost twenty-eight months between the time of defendant's appearance and testimony before the grand jury on October 19, 1972, and the return and filing of the indictment in this court, which took place in early January, 1975;

2. There was an improper and illegal use of the transcript of defendant's grand jury testimony before the grand jury which returned this indictment;

3. There was no other evidence presented to the grand jury which returned this indictment, other than the transcript of the testimony of the defendant before the grand jury on October 1972;

4. The grand jury which returned the indictment, was not the same grand jury which heard the testimony of the defendant in October, 1972;

5. If the grand jury which returned the indictment was in fact the same grand jury which heard the testimony of the defendant in October, 1972, then that grand jury had been sitting in excess of eighteen months, in violation

of Rule 6 of the Federal Rules of Criminal Procedure.

Yours, etc.,

H. ELLIOT WALES
Attorney for Defendant
Lucchetti
747 Third Avenue
New York, N.Y. 10017
(212)421-1993

New York, N. Y.
Dated: March 5, 1975

TO: CLERK OF THE COURT

UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

CHARLES LUCCHETTI,

Defendant.

INDICTMENT #71 CR 849
INDICTMENT #75 CR 25

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

CHARLES LUCCHETTI, being duly sworn, deposes and says:

I am the defendant herein, and submit this affidavit in support of my application to dismiss indictment 75 CR 25, and to suppress the use of the grand jury testimony as to both indictments.

Henry Boitel, Esq. represented me during the entire year 1972 with respect to my appeal to the Court of Appeals from the judgment of conviction, and with respect to the application for a writ of certiorari from the judgment affirming the conviction.

On June 12, 1972, the Court of Appeals affirmed the conviction. Docket #72-1210.

On November 6, 1972, the Supreme Court of the United States denied my application for certiorari. Docket #72-5246.

In October 1972, while my certiorari application was pending in the Supreme Court, and during the period of time that HENRY BOITEL was my counsel, Emanuel Moore, the Assistant United States Attorney who prosecuted

me at the trial, asked me to testify before the grand jury in this district. Emanuel Moore promised me that my grand jury testimony would never be used against me, either directly or indirectly, in any proceedings either in this court or in any other court. Furthermore, Emanuel Moore told me that it was not necessary that I discuss this matter with my attorney, Henry Boitel. In fact Emanuel Moore told me that it would be best if I did not discuss this matter with Mr. Boitel. He told me that he had no intention of discussing it with Henry Boitel, and that he believed it was best that just he and I take care of this thing together. As a result I never discussed this matter with Henry Boitel.

I reminded Emanuel Moore at the time that both John Greenmeier and Robert Chaffin were dead, and that I had nothing to fear from any witnesses testifying against me with regard to these bank robberies. I told him that I thought I might be exposing myself unnecessarily if I were to testify before the grand jury, and admit any knowledge or participation in these robberies. Emanuel Moore promised me that he would never use my grand jury testimony against me, and he assured me that I had nothing to worry about or fear. In fact he told me that his only interest in securing my testimony was to seek the indictment of Kenneth Rohl. He told me that he would advise Judge Mishler that I had assisted the government in an important matter, and that he would recommend to Judge Mishler that my sentence be reduced.

At all times I relied upon the representations of Emanuel Moore that his office would never use my grand jury testimony against me.

I testified solely and exclusively because I was relying upon his representations and promises.

Charles Lucchetti
CHARLES LUCCHETTI

Sworn to before me this
5th day of March, 1975

H. Elliot Wales

H. ELLIOT WALES
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-41-0515
Qualified in Kings County
Commission Expires March 31, 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

CHARLES LUCCHETTI,

Defendant.

INDICTMENT #71 CR 849
INDICTMENT #75 CR 25

COUNSEL'S AFFIDAVIT IN SUPPORT OF MOTION

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

H. ELLIOT WALES, being duly sworn, deposes and says:

I am counsel for the defendant Charles Lucchetti.

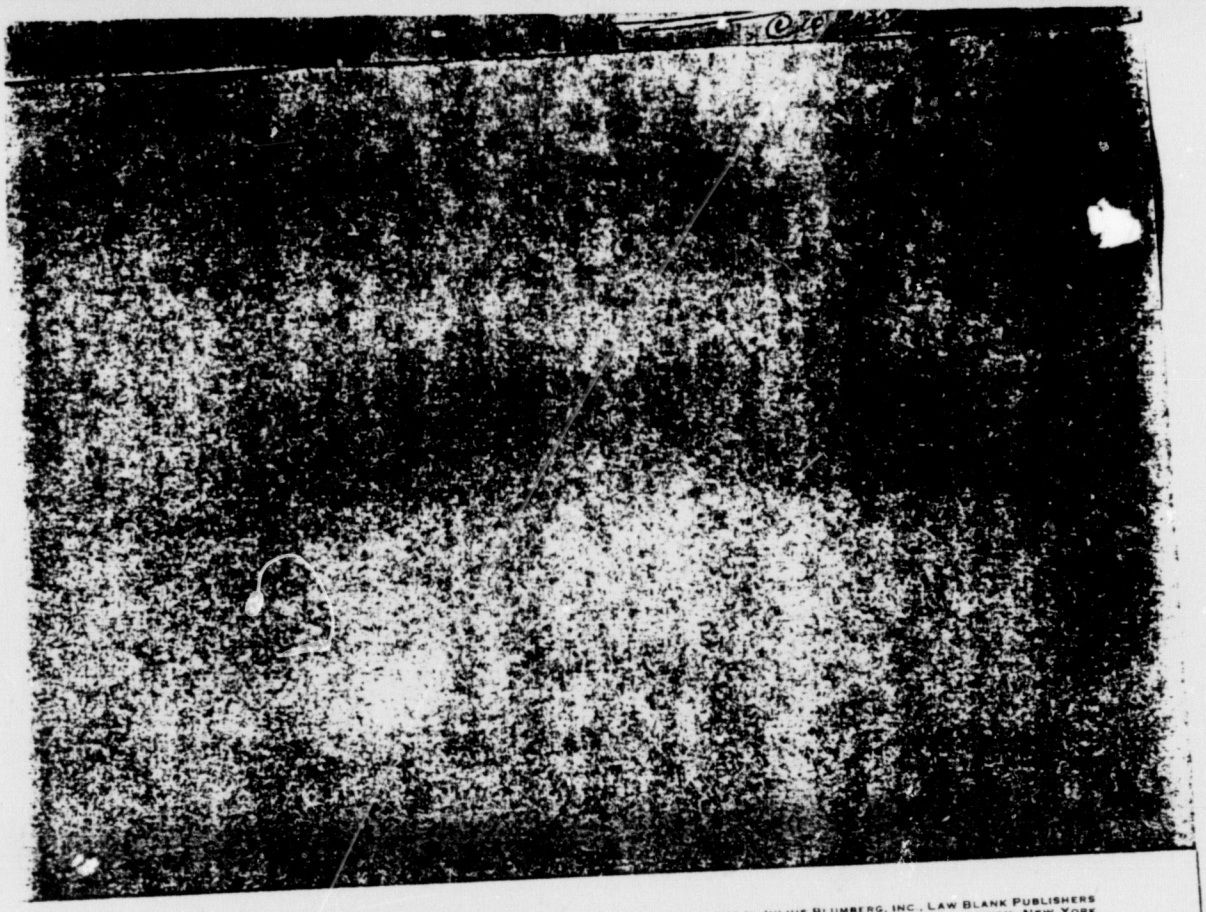
Just last month I conferred in person with Emanuel Moore, at his office and in the cafeteria at 961 Federal Plaza, New York City.

Emanuel Moore told me that in October 1972, he had absolutely no intention of indicting or prosecuting Charles Lucchetti with respect to any other bank robberies. He told me that his only interest in having Lucchetti testify before the grand jury was in connection with an investigation of Kennth Rohl. He also told me that at no time did he contact, confer, or discuss Lucchetti's appearance before the grand jury with Henry Boitel, Esq., Lucchetti's attorney. He also tole me that he assured Lucchetti that he would make known to Judge Mishler Lucchetti's cooperation with the government in this matter.

H. ELLIOT WALES

Sworn to before me this
5th day of March, 1975

LILLIAN KURTZER
COMMISSIONER OF DEEDS
CITY OF NEW YORK NO. 4-652
Certificate Filed in New York County
Commission Expires December 1, 1976



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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

C. 321—Affidavit of Service by Mail.
Affirmation of Service by Mail on Reverse Side.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

against

CHARLES LUCCHETTI,

Defendant

Index No.

Indictment #71 CR 849
Indictment #75 CR 25

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK, COUNTY OF New York *ss.:*

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at Queens, N.Y.

That on the 5th *day of* March 19 75 *deponent served the annexed* Omnibus Motion for Discovery and inspection, etc., and Brief of Defendant in support of application to dismiss an application to suppress use of grand jury transcript.

on Office of United States Attorney

attorney(s) for Plaintiff *in this action at* United States Courthouse, 225 Cadman Plaza East, Brooklyn, NY. 11201

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States post office department within the State of New York.

Sworn to before me this 5th *day of* March 19 75

H. ELLIOT WALES
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-4129015
Qualified in Kings County
Commission Expires March 31, 1975

Lillian Kurtzer
(The name signed must be printed beneath)
Lillian Kurtzer

File

FILED
U.S. DISTRICT COURT
JUL 1 1975
TIME A.M. .....
P.M. .....

H. ELLIOT WALES

LAW OFFICES
747 Third Avenue, New York 10017
(212) 421-1993

March 17, 1975

Joan O'Brien, Esq.
Office of the United States
Attorney
United States Courthouse
225 Cadman Plaza, East
Brooklyn, New York 11201

JUL 1975
TIME A.M. .....
P.M. .....

Re: United States v. Lucchetti
74 Cr. 5

Dear Ms. O'Brien:

This letter will confirm our telephone conversation of last week.

You have advised me that you are in possession of notes of interviews conducted by the FBI of Charles Lucchetti during September and October 1973.

You have further advised me that you recognized that I am entitled to these interview notes pursuant to my motion for discovery and inspection. On the other hand you have asked my permission that you not be required to send them until such time as Lucchetti has been apprehended. This arrangement is satisfactory to me.

Also in that telephone conversation I have advised you that I would consider any testimony relative to admissions and confessions made by Lucchetti in these various interviews with the FBI in September and October 1973 to be covered by my application to suppress the grand jury testimony.

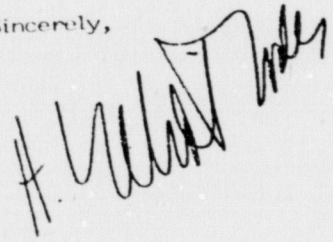
I would submit that the agents had no right to speak with Lucchetti at that time in the absence of counsel. Therefore please consider my application to suppress as covering also the proposed

(71)

testimony of the agents.

As a matter of practicality, we should ascertain from Judge Mishler whether there serves any purpose at this time for all of us to struggle with these motions, inasmuch as Lucchetti is a fugitive. My feelings are that we should hold the motions in abeyance until such time as Lucchetti turns up. Then we can litigate the motions, and set the matter down for trial.

Sincerely,



HEW/lk

cc: Chambers of
Judge Jacob Mishler
United States Courthouse
225 Cadman Plaza, East
Brooklyn, New York 11201

RJD:JOB:ljl
F. #715492

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - -

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
JUL 1 1975
TIME A.M. .....
P.M. .....

UNITED STATES OF AMERICA

- against -

CHARLES LUCCHETTI,

Defendant.

- - - - - - - - - - - - - - - - - - X

AFFIDAVIT IN OPPOSITION

71 CR 849

STATE OF NEW YORK)
) SS:
COUNTY OF KINGS)

JOAN S. O'BRIEN, being duly sworn, deposes and says:

(1) I am an Assistant U.S. Attorney presently assigned to the Office of the United States Attorney for the Eastern District of New York, duly appointed according to law and acting as such.

(2) This affidavit is submitted in opposition to petitioner Lucchetti's motion to suppress defendant's post-conviction statements made to the Federal Grand Jury on October 19, 1972 and to agents of the Federal Bureau of Investigation over a period ranging from August 1971 until July, 1974.

(3) The defendant was convicted after a jury trial in the United States District Court for the Eastern District of New York for the crime of aggravated bank robbery and conspiracy to commit same (Title 18, U.S.C., §§2113(d); 371). On October 15, 1971 this Court imposed a sentence of twenty years imprisonment on the robbery count, a five year concurrent sentence on the conspiracy count and an aggregate fine of $15,000.

(4) On June 12, 1972, the United States Court of Appeals for the Second Circuit affirmed the conviction of this defendant from the bench without opinion. United States v. Charles Lucchetti, 461 F.2d 846 (2d Cir. 1972). On November 6, 1972,

the Supreme Court of the United States denied defendant's petition for certiorari, 409 U.S. 987 (1972).

(5) On September 1, 1971 Agents Long and Achenbach visited the defendant at the Federal House of Detention in New York. At this time the Federal Bureau of Investigation "Interrogation: Advice of Rights" Form was read to Lucchetti who refused to sign the form and further refused to make any statement. (Appendix at 1)

(6) On March 20, 1972, the defendant wrote to Agent Achenbach a letter complaining about violations of his civil rights at the Suffolk County Jail (Appendix at 2). The defendant was visited by Federal Bureau of Investigation Agents on March 27, 1972 to inquire as to the substance of these alleged violations. An investigation at the Suffolk County Jail proved these complaints to have been unwarranted (Appendix at 3A-3C).

(7) On May 31, 1972, Charles Lucchetti, while incarcerated at the Suffolk County Jail, Riverhead, New York, requested in writing that Federal Bureau of Investigation Agents interview him so that he might inform them of alleged improprieties by officials at the Suffolk County Jail (See Appendix at 4). Federal Bureau of Investigation Agents Daniel Long and Arthur Achenbach interviewed the defendant on June 5, 1972, after cautioning him not only as to his Miranda rights but also as to the fact that his appeal was still pending before the Second Circuit Court of Appeals. Lucchetti informed the agents that he understood his rights, did not desire the services of an attorney, and since he had discharged Kenneth Rohl, he intended to act as his own lawyer. During this interview Lucchetti informed that he might have some "very valuable information" to provide to authorities. He was told that any cooperation he gave to the Federal Bureau of Investigation would be made known to the United States Attorney, and possibly through the United States Attorney to the Federal Court.

The defendant also informed that he would soon make a motion for a new trial based upon the alleged perjury of Dempsey about promises of leniency. (Appendix at 5A-5B).

(8) On June 8, 1972, the defendant again requested by letter a visit by Agent Achenbach (Appendix at 6). On June 14, 1972 Agents Achenbach and Long visited Mr. Lucchetti at the Suffolk County Jail. The Federal Bureau of Investigation rights form was read to him but he refused to sign it. Mr. Lucchetti informed of more alleged civil rights complaints but further informed that his real reason for the interview was his interest in providing information about other crimes in return for a lesser sentence. The agents informed him that they could make no promises but that they would relay his request to the Assistant United States Attorney (Appendix at 7).

(9) On June 20, 1972, defendant wrote another letter to Agent Achenbach requesting an interview. (Appendix at 8). On June 26, 1972, he was visited once again by Agents Long and Achenbach at which time Lucchetti again expressed a desire to cooperate (Appendix at 9). Another letter requesting an interview was sent by Lucchetti on June 27, 1972 and on July 17 Agent Long informed him that he could see Assistant United States Attorney Moore on July 21, 1972. (Appendix at 10, 11).

(10) On July 21, 1972, Charles Lucchetti was interviewed by Assistant United States Attorney Emanuel Moore. The defendant alleged that he could provide information on several bank robberies, a homicide and on public corruption. Mr. Moore informed him that he could not make any promise to Mr. Lucchetti in exchange for this information but that any cooperation he gave would be called to the attention of the United States District Court and the United States Board of Parole. (Appendix at 12).

(11) Once again on July 26, 1972, Mr. Lucchetti wrote to Agent Achenbach alleging civil rights violations and requesting an interview (Appendix at 13).

(12) On August 3, 1972, the defendant was interviewed by Agents Long and Achenbach at the Suffolk County Jail. The defendant was furnished four Federal Bureau of Investigation rights forms all of which he read and all of which he signed. At this time, Mr. Lucchetti informed that he understood his rights and did not desire the services of an attorney since he was representing himself. The defendant thereupon proceeded to give a detailed description of his participation and that of his accomplices in bank robberies on March 9, 1970 (First National Bank of Bay Shore); on March 20, 1970 (Security National Bank); on April 20, 1970 (Security National Bank) and on December 21, 1970 (First National Bank of Bay Shore) (the subject of this indictment). (Appendix at 14A-14J). Prior to questioning Mr. Lucchetti as to the December 21, 1970 robbery, Special Agent Long reminded Mr. Lucchetti that he had a pending motion before the United States Supreme Court. Mr. Lucchetti responded that he was aware of this but agreed to cooperate because his appeal would be denied anyway. (Appendix at 14-I).

(13) On August 8, 1972, the defendant was again interviewed by Agent Long at the Suffolk County Jail. The contents of the rights form were called to Mr. Lucchetti's attention on four occasions prior to an interview on each of the four robberies. The defendant again informed that he understood his rights and intended to represent himself. Mr. Lucchetti thereupon proceeded to give detailed descriptions of all four bank robberies (Appendix at 15A-15H).

(14) On August 14, 1972, the defendant was interviewed by Agents Long and Donald Wiebke. The defendant was again furnished with the same Federal Bureau of Investigation rights form which he read and signed. Once again Mr. Lucchetti

informed that he would act as his own attorney. He thereupon proceeded to give further information to the agents. (Appendix at 16A-16D).

(15) On August 25, 1972, Agents Long and Wiebke interviewed Mr. Lucchetti after receiving an executed Advice of Rights form and a statement by Mr. Lucchetti that he desired to represent himself. (Appendix at 17A-17C).

(16) On September 6, 1972, Agents Long and Wiebke interviewed the defendant Charles Lucchetti. He again read and signed the Federal Bureau of Investigation form and informed that he was representing himself. At this time the defendant provided the agents with information on additional robberies in the Long Island area. (Appendix at 18A-18B).

(17) On September 9, 1972, the defendant's wife, Barbara Lucchetti, called the Federal Bureau of Investigation and informed Agent Long that her husband desired to be interviewed as soon as possible. (Appendix at 19).

(18) On September 10, 1972, Agent Long again interviewed Charles Lucchetti after furnishing him with the Federal Bureau of Investigation rights form which Mr. Lucchetti signed while he stated that he desired to represent himself. Mr. Lucchetti provided additional information on bank robbery suspects. (Appendix at 20A-20B).

(19) On September 27, 1972, Agent Long interviewed Charles Lucchetti to ascertain the whereabouts of two robbery suspects. At this time another rights form was shown to and executed by the defendant. (Appendix at 21).

(20) On October 1, 1972, the defendant contacted the Federal Bureau of Investigation to have them arrange for a meeting between Lucchetti and Mr. Patrick Henry, Chief Trial Assistant at the Suffolk County District Attorney's Office. (Appendix at 22).

(21) On October 2, 1972, Agents Wiebke and Long interviewed the defendant briefly. Once again they obtained an executed Federal Bureau of Investigation rights form and a statement indicating his desire to represent himself. (Appendix at 23).

(22) On October 4, 1972, Mr. Henry, Chief Trial Assistant, Suffolk County District Attorney's Office and Agent Long met Mr. Lucchetti at the Suffolk County Jail. The defendant was again furnished with an Federal Bureau of Investigation rights form, which he read and signed. Once again, Mr. Lucchetti stated his desire to represent himself. At this time, Mr. Lucchetti informed in a hypothetical fashion that he had information as to local crimes, in particular, one homicide involving a prominent Suffolk County attorney. Mr. Lucchetti asked Mr. Henry as to what he might receive from his office in the event that he might cooperate, to which Mr. Henry replied that he could not make any commitments but would take the matter under advisement. (Appendix at 24A-24B).

(23) On October 7, 1972, the defendant wrote another letter to the Federal Bureau of Investigation once again alleging civil rights violations (Appendix at 25).

(24) On October 12, 1972, Agents Long and Achenbach interviewed the defendant who thereupon admitted to inducing seven other inmates to submit letters to the Federal Bureau of Investigation and a petition to the New York State Supreme Court charging that the Suffolk County jail contained 10 "torture chambers." Lucchetti admitted that he had dictated the contents of these letters for the other prisoners to sign and did so as a form of harassment against prison officials. (Appendix at 26A-26C).

The defendant also informed that he had obtained affidavits from former inmate associate of Jack Dempsey alleging that Dempsey had made "a deal" with the government prior to trial.

Lucchetti further stated that he obtained these affidavits in early 1972 and that he was considering using these affidavits as a basis for a motion for a new trial. (Appendix at 26).

(25) On October 19, 1972, Charles Lucchetti testified before the Grand Jury (United States v. John Doe) in a matter inquiring into the activities of Mr. Lucchetti's former attorney, Kenneth Rohl. At this time, Assistant United States Attorney Moore informed Charles Lucchetti as to his Fifth Amendment right to remain silent and asked him to sign a Waiver of Immunity From Prosecution. (Appendix at 27B-27E). Mr. Lucchetti thereupon testified as to his involvement and that of his former attorney's involvement in several bank robberies (including the robbery on December 21, 1970, subject of this indictment). (Appendix at 27F-27O).

(26) On June 3, 1974, Charles Lucchetti telephonically contacted Agent Long, in Miami, Florida and advised that he testified at the "Julie Klein" trial. (Appendix at 28).

(27) On July 19, 1974, Charles Lucchetti telephonically contacted Agent Long, in Miami, Florida and indicated that he had new information as to the activities of a different attorney's illegal activities. (Appendix at 29).

(28) With an affidavit dated July 22, 1974, Charles Lucchetti petitioned this Court for a Writ of Habeas Corpus alleging that (1) a government witness lied at trial when he stated that he had received no promise from the government in exchange for his testimony and (2) the Court had knowledge of this witness' alleged perjury.

(29) By Memorandum of Decision and Order dated December 16, 1974 this court granted the petition, vacated the judgment and granted a new trial.

(30) By motion dated March 5, 1975, defense counsel moved to suppress the use of the grand jury transcript on October 19, 1972. Counsel further moved that the defendant's statements to the Federal Bureau of Investigation Agents also be suppressed. It is argued that the statements before the grand jury should be suppressed because of an alleged promise made by Mr. Moore to defendant that this testimony would not be used against him and because such "post-indictment interrogation" violated Spano v. New York, 360 U.S. 315 (1959); and Massiah v. United States, 377 U.S. 201 (1964).

(31) On April 9, 1975, I telephonically contacted Emanuel Moore and read to him the contents of the affidavits of Charles Lucchetti dated March 5, 1975 and H. Elliot Wales, dated March 5, 1975. Mr. Moore informed me that if subpoenaed he will testify at a hearing that at no time did he make any promises to Charles Lucchetti that he would not be further prosecuted or that his statements would not be used against him. Mr. Moore stated that at the times he interviewed Charles Lucchetti after his conviction, he was aware that Mr. Lucchetti had an appeal pending before the Second Circuit Court of Appeals but assumed that Kenneth Rohl was prosecuting this appeal. (Assistant U.S. Attorney Ronald DePetris handled the appeal of this Case). On the date of Mr. Lucchetti's testimony before the Grand Jury, after the defendant was given his warnings, Mr. Lucchetti not only did not request an attorney but he asked that Mr. Rohl not be notified of his cooperation since Mr. Rohl was the target of the investigation. Mr. Moore informed me that he had never heard of Henry Boitel's name in connection with this case until his interview with H. Elliot Wales in February, 1975 in connection with this motion to suppress.

Accordingly, he never instructed Mr. Lucchetti not to discuss his testimony with Henry Boitel nor did he have any contact with Mr. Boitel.

Mr. Moore further informed that it is true that in October of 1972 he had no subjective intent in prosecuting Mr. Lucchetti in light of his twenty-year sentence. He further stated however that he never conveyed this intent to Mr. Lucchetti. In short, Mr. Moore never made any promises to the defendant that he would not prosecute him further or that his statements would not be used against him. The only promise that Mr. Moore did make was that Mr. Lucchetti's cooperation would be made known to the United States District Court and United States Board of Parole and that he would possibly recommend a reduction of sentence if the defendant's cooperation was complete.

(32) It should also be noted that the Federal Bureau of Investigation report of Agent Long on July 21, 1972 (Appendix at 12) also corroborates Mr. Moore's statement that no promises were made to Mr. Lucchetti other than the promise to make his cooperation known to the court and parole board. Equally corroborative is the transcript of the grand jury testimony on October 19, 1972. In short, no promise had been made to Mr. Lucchetti that his statement would not be used against him and they should not be suppressed on those grounds.

(33) Equally meritless is defendant's arguments under Spano v. New York, 360 U.S. 315 (1959) and Massiah v. United States, 377 U.S. 201 (1964). Unlike Spano, the defendant never requested counsel or was subjected to prolonged interrogation and the feigned pleas of sympathy from a supposed friend. Unlike, Massiah, the defendant was never subjected

to surreptitious devices to elicit incriminating statements in the absence of counsel. Every discussion that the Federal Bureau of Investigation agents and the prosecution had were made with meticulous regard for the defendant's rights. The interviews of the Federal Bureau of Investigation and Mr. Moore with the defendant, were the result of Mr. Lucchetti's repeated requests, initially under the guise of presenting civil rights complaints but later admittedly for the purpose of obtaining some consideration in his sentencing.

Under Miranda v. Arizona, 384 U.S. 436 (1966), a defendant properly warned, may waive his rights (including his right to consult with counsel) as long as he does so knowingly, voluntarily and intentionally. Id. at 444, 475-476) The burden however rests on the government to prove that such a waiver was truly informed and voluntary. Id. at 475. Miranda held that an "express statement that the individual is willing to make a statement and does not want an attorney followed closely by a statement could constitute a waiver" Id at 475. See also, United States v. Drummond, 354 F.2d 132, 148 (2d Cir. 1965) (en banc), cert. denied, 384 U.S. 1013 (1966); United States v. Dority, 487 F.2d 846, 848 (6th 1973); United States v. Cobbs, 481 F.2d 196, 200 (3rd Cir.), cert. denied, 414 U.S. 980 (1973); United States v. Springer, 460 F.2d 1344, 1350-1352 (7th Cir. 1972); Cf. United States v. Masullo, 489 F.2d 217, 221-224 (2d Cir. 1973).

Here, there is overwhelming evidence that Charles Lucchetti was repeatedly advised of his Miranda rights. On September 1, 1971 he initially refused to make a statement evidencing his awareness of his right to remain silent. Later, however, he repeatedly executed the F.B.I. rights form and specifically asserted that he did not desire the services of an attorney because he was representing himself.

Nor was Mr. Lucchetti ignorant of his right to appeal, his right to petition the United States Supreme Court or his right to petition this Court for a new trial. On May 31, 1972 Agent Long specifically advised him of his pending appeal. The defendant chose to make a statement. On August 3, 1972 Agent Long advised him of his pending writ before the United States Supreme Court. Mr. Lucchetti chose to give further statements implicating himself. The defendant informed Agent Long that as of May 31, 1972 he intended to file a motion for a new trial based upon Dempsey's testimony at trial. It was not until July 22, 1974 that the defendant actually brought the motion for a new trial before this Court. In all, Mr. Lucchetti was fully informed of his rights, fully understood his rights and engaged in a cat and mouse attempt to feed information to law enforcement officials for the purpose of having a reduction of sentence before filing his petition for a new trial. He further sought to give the appearance of cooperation with the F.B.I. to obtain consideration in the Suffolk County Court.

In short, these statements are not the product of ignorance or coercion but were given for the calculated purpose of obtaining a benefit in a sentence reduction. See United States v. Drummond, supra, 354 F.2d at 149.

Accordingly, the grand jury transcript and statements made to the F.B.I. agents should not be suppressed.

Jno. S. O'Brien

JOAN S. O'BRIEN
Assistant U.S. Attorney

Sworn to before me this
11th day of April 1975

Notary Public

Commission Expires March 30, 1979

Date 9/3/71

CHARLES LUCCHESITI was interviewed at the Federal House of Detention in New York City on September 1, 1971.

He was furnished with an Advice of Rights; Waiver of Rights form which he returned unsigned after reading same.

He advised that he understood his rights but that he had nothing to say.

On 9/1/71 at New York, New York File # NY 91-9596

by SA DANIEL W. LONG
SA ARTHUR J. ADLERBACH:nmk Date dictated 9/1/71

A 132

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency;

LORSO

SHERIFF'S DEPARTMENT

SUFFOLK COUNTY JAIL
Center Drive
Riverhead, N. Y. 11901

CHARLES C. CYRTA
WARDEN

ADDRESSED TO

DATE [illegible]

NAME [illegible]

FROM [illegible]

STREET & NO. FBI OFFICE

TIER [illegible]

POST OFFICE [illegible], N.Y.

DEAR SIR,

I AM A PRISONER AND WISH TO FILE A FEDERAL COMPLAINT AGAINST THE ADMINISTRATIVE OFFICERS OF THE SUFFOLK COUNTY JAIL FOR CERTAIN VIOLATIONS AND DEPRIVATIONS OF MY CIVIL AND CONSTITUTIONAL RIGHTS. THESE ARE VIOLATIONS OF THE CIVIL RIGHTS ACT OF 1871, 42 U.S.C. 1983 AND 1985 INCLUDING MISTREATMENT AND ABUSE WHICH INVOLVE DENIAL OF MY RIGHTS UNDER THE SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION UNDER SAID "COLORS" ARE ALLEGATIONS THAT

THE NAMED DEFENDANTS, SUFFOLK COUNTY SHERIFF RICHARD AND LIEUTENANT LUCAS, IN PERSON AND BY THEIR AGENTS OR EMPLOYEES IN CHIEF OF STAFF TO DISCLOSE SOME OF THE INFORMATION FOR THE NECESSARY CAUSE OF ACTION EXISTS TO EXPECT SOME OF THE CASES AND ARE FOR PRESENT PURPOSES OF VIOLATIONS OF U.S. CODE CIVIL RIGHTS ACTS AND THE UNITED STATES CONSTITUTION. CONSTITUTIONALLY PROTECTED RIGHTS AND PRIVILEGES. I WAS TRANSFERRED TO U.S. MAIL ON MARCH 17, 1972. I WAS TOLD A LIE BY MR. CYRTA. I WAS SET BY POSTPONED MARCH 15, 1972. THIS IS WAS DECEIVED TO BE AT THE DIRECTION OF MR. LUCAS WITH A FEDERAL OFFENSE OF A THE PRESENT NUMBER. THAT WAS SO UNLAWFULLY DENIED BY DUE TO THE DISTRICT, BEGINNING OF A CRIME AND OTHER OFFICIAL.

I FEEL THAT THE ACTS COMMITTED HERE SHOULD BE RAISED IN RELATION TO CERTAIN DEFENDANTS IN FEDERAL COURT, IN ORDER TO WITHDRAW AS THEY HAVE DONE WITH THE DANGER OF A VIOLATION. I HAVE NOT BEEN DENIED IN THE SAME COURTS AS DESCRIBED IN WEST V. MCMANN AND JOHNSON VS PERRY.

I HAVE DISCUSSED THESE MATTERS WITH S.A. DOYLE AND AT YOUR REQUEST I HAVE TO DATE NOT FILED A FEDERAL COMPLAINT. IF I DECIDE TO TAKE ACTION IN THESE MATTERS WITH THE APPROPRIATE AUTHORITIES I WILL LET YOU KNOW.

I WOULD APPRECIATE IT IF YOU WOULD LET ME KNOW IF YOU WISH TO SEE ME AT THE SUFFOLK COUNTY JAIL. I WILL BE AVAILABLE TO SEE YOU AT ANY TIME AT THE JAIL. IF YOU WISH TO SEE ME, PLEASE CONTACT LIEUTENANT LUCAS AND HE WILL BE NOTIFIED TO BRING ME TO YOUR OFFICE.

SINCERELY YOURS,

Charles C. Lorso

A 133

Write on this side only

New York, New York
March 31, 1972

Unknown Subjects;
Officials At
Suffolk County Jail,
Riverhead, New York
Charles Lucchetti - Complainant

On March 24, 1972, a letter was received at the Babylon Resident Agency of the Federal Bureau of Investigation (FBI) from Charles Lucchetti, an inmate at the Suffolk County Jail, who is incarcerated there awaiting trial on a bank robbery. In this letter he alleges that his civil rights are being violated in that officials of the jail have not permitted him to communicate with various courts, and he also alleged that officials at the jail are guilty of wiretapping and eavesdropping on lawyer-client communications.

On March 27, 1972, Lucchetti was contacted at the Suffolk County Jail. He related that his complaint involved in particular a writ that he had prepared and mailed on February 7, 1972, to the Clerk of the Court, with a copy to the United States Attorney (USA), Eastern District of New York (EDNY). He stated that he feels certain that this writ was never mailed, since in the past he has received a speedy reply to any communication that he has sent to that court, but in this instance the writ was never acknowledged.

Lucchetti further advised that on March 17, 1972, he prepared and sent another writ to Suffolk County Supreme Court. He stated that this letter was returned to him by jail officials on March 20, 1972, who refused to mail it.

Lucchetti also advised that he has heard that the interview rooms at the jail are "bugged" and that the telephones are "tapped". He elected to have heard this from an individual who allegedly was so informed by a prison guard.

~~On March 29, 1972, Assistant United States Attorney (AUSA) Emanuel A. Heers, Eastern District of New York (EDNY), advised that he recalled receiving a communication from~~

Appendix 3-A

Unknown Subjects;
Officials At
Suffolk County Jail,
Riverhead, New York
Charles Lucchetti - Complainant

On March 27, 1972, Warden James Cleary, Suffolk County Jail, made available the mail log, which reflected that on February 7, 1972, a communication was mailed to Federal Court, Brooklyn, New York, on behalf of Lucchetti.

Warden Cleary further advised that in regard to the letter that was returned to Lucchetti on March 20, 1972, the reason that it was returned was that he had written it on toilet paper, and the Warden stated that it would be an insult to the court to send such a communication. He stated further that Lucchetti had written it in this manner in order to create the impression that he was being held in some sort of solitary confinement and that not even writing paper was available to him. Warden Cleary related that the fact of the matter is that any type of writing material is available to him, including legal type stationary.

Warden Cleary further advised that Lucchetti has caused continual disturbances and commotions since he was moved here from the recent penitentiary at Louisburg, Pennsylvania. He stated that for instance he had started a series of small fires on one tier where he was located, and on one occasion had caught a small mouse which he brought to the kitchen and tried to convince the other inmates that he had found it in a coffee urn.

Regarding the alleged eavesdropping and wiretapping Warden Cleary denied that any such practice exists and pointed out that such a flagrant violation of rights would not be condoned by his institution.

On March 28, 1972, Assistant United States Attorney (AUSA) Emanuel A. Metz, Eastern District of New York (EDNY), advised that he recalled receiving a communication from

3-B

Unknown Subjects;
Officials At
Suffolk County Jail,
Riverhead, New York
Charles Lucchetti - Complainant

Lucchetti in February, 1977. He stated that he felt that there was no substance to this communication, and since the court received a copy and evidently took no action on it, he took no action on it and made it a part of his file regarding Lucchetti.

3-C

DO NOT REMOVE
IT FROM EXHIBIT
2154-117
Y JAIL
CENSORED
BY

SHERIFF'S DEPARTMENT
SUFFOLK COUNTY JAIL
Center Drive
Riverhead, N. Y. 11901

JAMES F. CLEARY
WARDEN

ADDRESSED TO
NAME
STREET & NO.
POST OFFICE

ATE 5-21-72
ROM
HER

Dear Pete,
Thanks for your letter. Sorry we could not be present to testify on your behalf. Hope everything goes well.
— Republic —

Charles Lucchetti
Charles Lucchetti

A 432

Write on this side only

Page 1 of 4

Date of transcription 6/8/72

On June 5, 1972, CHARLES LUCCHETTI, was interviewed at his own request at the Suffolk County Jail, Riverhead, New York.

LUCCHETTI requested this interview so that he could call to the attention of the interviewing agents certain facts which he considered to constitute an unjustified detention by the Suffolk County authorities of him, at the Suffolk County Jail, in reference to several outstanding local Suffolk County charges.

Prior to the commencement of the interview LUCCHETTI was cautioned due to the fact he has an outstanding appeal in reference to a bank robbery conviction for which he was sentenced to 20 years of imprisonment, as to the following by Special Agent (SA) DANIEL W. LONG: that he has the right to remain silent; that anything he said could be used against him in a court of law; that he he had a right to consult with an attorney for advice and that he could terminate the interview at any time.

LUCCHETTI advised that he understood the above rights and that he did not require the services of an attorney since he has discharged Henry POLL, and that he is now acting as his own attorney.

During the course of the above interview, LUCCHETTI stated that he will soon make a motion for a new trial on the bank robbery conviction based on the fact that [illegible] had lied on the stand during his trial. LUCCHETTI stated that he allegedly has an affidavit from MURPHY's wife and that based on this affidavit he can now prove that Mr. MURPHY received leniency in return for his testimony against him.

Interviewed on 6/5/72 at Riverhead, New York File # NY 91-9586

by SAS ARTHUR J. ACHTYBACH & SA DANIEL W. LONG/wdl/cmr Date dictated 6/6/72

A 133

Appendix 5A

He stated that DEMPSEY's wife is presently having an affair with a relative of his, who he described as his cousin, and jokingly he remarked, that DEMPSEY's wife "will say anything I want her to say."

LUCCHETTI advised that he had what he considered to be some very valuable information.

He was told that any cooperation he may wish to furnish to this agency by way of giving information would be promptly made known to the office of the United States Attorney, and possibly through the United States Attorney Office to the Federal Court, Brooklyn, New York.

Appendix 5B

DO NOT REMOVE
CLIP FROM EXHIBIT
J-154-105

PHILIP A. CORSO
SHERIFF

SUFFOLK COUNTY JAIL

BY

CENSORED

SHERIFF'S DEPARTMENT
SUFFOLK COUNTY JAIL
Center Drive
Riverhead, N.Y. 11901

JAMES F. CLEARY
WARDEN

ADDRESSED TO

DATE 5/6/80 NAME [illegible]

FROM Clark Lovelette STREET & NO. [illegible]

TIER Det POST OFFICE

Dear Sir

I would like to inform you

Sincerely yours

Clark Lovelette

A 140

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : SAC, NEW YORK (44-2154)

DATE: 6/20/72

FROM : SA ARTHUR J. ACHENBACH #28
BABYLON RA

SUBJECT: UNKNOWN OFFICIALS AT
SUFFOLK COUNTY JAIL,
RIVERHEAD, NEW YORK
CHARLES LUCCHETTI - VICTIM
CIVIL RIGHTS

On 6/13/72, the writer received a letter from LUCCHETTI, an inamte at the Suffolk County Jail in which LUCCHETTI stated that he wished to see the writer.

On 6/14/72 LUCCHETTI was contacted at the jail by SA DANIEL W. LONG and thewriter. He stated that he was being held in adetention cell because he refused to eat. He stated however that he requested the interview not because of a Civil Rights complaint but because he felt that he could furnish information concerning crimes in which the government had an interest in return for consideration in a possible shorter sentence on his part. It was explained to him that the agents could not make any such promise and he was also at that point furnished an advice of rights - waiver form. He stated that he understood his rights but declined to sign the form.

He advised that he felt that he could furnish information relating to a prominant citizen of Suffolk County being possibly involved in a matter of Bureau interest. He was asked if he would be willing to discuss this situation with a representative of the Office Of the USA, EDNY and he stated that he would be agreeable to such an interview. He was advised that his request would be presented to the USA and the interviw was concluded.

44-2154-4

(1)- New York (44-2154)
1 - New York (91-9596)
AJA/

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

141

Appendix at 7

CARD TO NOT REMOVE
THIS SLIP FROM EXHIBIT
44-3-154-146
SHERIFF

SHERIFF'S DEPARTMENT

SUFFOLK COUNTY JAIL
Center Drive
Riverhead, N. Y. 11901

SUFFOLK COUNTY JAIL
CENSORED
JAMES F. CLEARY
BY WARDEN

ADDRESSED TO

DATE 6/2/72
FROM [illegible]
TIER 1 L

NAME Dr. Orlando Rebhun
STREET & NO. Federal Prison
POST OFFICE Lewisburg, Pa.
Lewisburg, Pa.

Dear Sir,
I would like to receive
[illegible] Catholic [illegible]
to visit Stanley [illegible]

A 7:2

Write on this side only

Appendix 8

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

DATE: 6/27/72

TO : SAC, NEW YORK (44-2154)

FROM : SA ARTHUR J. ACHENBACH #28
BABYLON RA

SUBJECT: UNKNOWN OFFICIALS AT
SUFFOLK COUNTY JAIL,
RIVERHEAD, NY
CHARLES LUCCHETTI - VICTIM
CIVIL RIGHTS
(OO: NY)

On 6/26/72 a letter from LUCCHETTI, an inmate at Suffolk County Jail, dated 6/20/72 was received by the writer. LUCCHETTI requested that he be interviewed.

On 6/26/72, LUCCHETTI was contacted at the jail by SA DANIEL W. LONG and the writer. He complained that officials have refused to mail certain of his letters. He advised that the sealed letters were not mailed. It was pointed out to him that a regulation regarding mail at the jail prohibits mailing sealed envelopes and all mail must be reviewed before sending.

LUCCHETTI again indicated a desire to cooperate in matters of interest to the government in return for possible favorable considerations. He was advised that an appointment for interview of him by AUSA EMANUEL MOORE, EDNY has been made for 7/17/72.

44-2154-5

1 - New York (44-2154)
1 - New York (91-9596)
AJA/

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

A 143

Appendix 9

SHERIFF'S DEPARTMENT

PHILIP F. CORSO
SHERIFF

SUFFOLK COUNTY JAIL
Center Drive
Riverhead, N.Y. 11901

JAMES F. CLEARY
WARDEN

Addressed to:

DATE _____ NAME _____

FROM _____ STREET & NO. _____

TIER _____ POST OFFICE _____

FD-302 (Rev. 4-15-64)

FEDERAL BUREAU OF INVESTIGATION

Date 7/27/72

On July 17, 1972, CHARLES LUCCHETTI was contacted at his own request. LUCCHETTI was advised at this time that Mr. E.A. MOORE, an Assistant United States Attorney (AUSA) for the Eastern District of New York (EDNY), would not be available for an interview until July 21, 1972.

LUCCHETTI volunteered, in a hypothetical manner, that he was in the possession of information pertaining to several bank robberies, a homicide, and the criminal activities of a prominent attorney. He also volunteered that he possessed information pertaining to the illegal activities of a police officer.

No promises were made to LUCCHETTI and he was told that his remarks would be relayed to Mr. E.A. MOORE.

On 7/17/72 at Riverhead, New York File # NY 91-9596

by SA DANIEL W. LONG:cpc A 145 Date dictated 7/21/72

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2 Appendix 11

FD-302 (Rev. 4-15-64)

FEDERAL BUREAU OF INVESTIGATION

Date 7/27/72

On July 21, 1972, CHARLES LUCCHETTI was contacted by Assistant United States Attorney (AUSA) E.A. MOORE, Eastern District of New York (EDNY), at his own request.

LUCCHETTI volunteered in a hypothetical manner to Mr. MOORE that he had information in his possession in reference to several bank robberies, a homicide, and information pertaining to the criminal activities of a prominent attorney. He also volunteered that he possessed information pertaining to the illegal activities of a police officer.

LUCCHETTI questioned Mr. MOORE as to what could be done for him if he desired to cooperate with the Federal Government. Mr. MOORE stated that he could not make him any promises but that if he did desire to cooperate his cooperation would be called to the attention of the United States District Court in the Eastern District of New York, and to the United States Board of Parole.

LUCCHETTI stated that he wanted to think things over and that he would be in touch with the Federal Government at a later date.

On 7/21/72 at Brooklyn, New York File # NY 91-9595

by SA DANIEL W. LONG:cmc & 146 Date dictated 7/21/72

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Appendix 12.

IS SLIP FROM EXHIBIT
91-9544

PHILIP S. CORSO
SHERIFF

SHERIFF'S DEPARTMENT
SUFFOLK COUNTY JAIL
Center Drive
Riverhead, N. Y. 11901

JAMES F. CLEARY
WARDEN

ADDRESSED TO

DATE 7/21/72
FROM Charles Smallette
TIER N.T. #3

NAME Mr. Art Schmidt
STREET & NO. Babylon Jail
POST OFFICE

Dear Sir,

Since my interview July 21 1972 concerning my civil Rights which I have been denied in Suffolk county Jail. The conditions here at the county Jail have caused me to be very ill. We have placed no Locks in the cells in the event of detention there is a change in prisoners here in the center. The range is not locked, we are given small recreation appreciate if again I can have this recall come out and discuss the present situation with me and look at the matter thereafter.

Very Truly Yours
Charles Smallette

A 147

Write on this side only

Appendix at 13

Date 8/1/72

CHARLES LUCCHETTI was interviewed at his own request at the Suffolk County Jail in River Head, New York, by SAS DANIEL W. LONG and ARTHUR J. ACHENBACH.

LUCCHETTI was furnished by SA DANIEL W. LONG with an "Advice of Rights; Waiver of Rights" form, which he signed after reading same. LUCCHETTI stated that he understood his rights as set forth in the above form. He advised that he did now desire the services of an attorney since he was now representing himself.

LUCCHETTI was advised by SA DANIEL W. LONG that he would be questioned in reference to the March 9, 1970 armed robbery of the First National Bank of Bayshore, located at 340 Howells Road, Bayshore, New York.

LUCCHETTI advised that he, ROBERT NICHOLAS CHAFFIN, and JOHN HARRY GREENHEIER robbed the First National Bank of Bayshore located at 340 Howells Road, Bayshore, New York. He advised that on Monday, March 9, 1970, in the evening he assisted CHAFFIN and GREENHEIER in robbing this bank. He advised that he "cased" this bank and basically planned the robbery. He stated that CHAFFIN and GREENHEIER actually went into the bank while he was parked outside of the bank monitoring a radio that was capable of picking up Suffolk County Police Department radio calls. He stated that CHAFFIN carried the automatic weapon in this robbery. LUCCHETTI referred to the weapon that CHAFFIN carried in this robbery as a "machine gun."

LUCCHETTI advised that he met attorney KENNETH ROHL in about the year 1965. He stated that since 1965, ROHL has represented him in many matters both on a civil basis as well as in criminal matters.

He advised that after his release from the Suffolk County Jail in River Head, New York, in 1969, he, in late 1969 or early 1970, had a conversation or conversations with

---

On 8/3/72 at River Head, New York File # NY 91-8462

by SAS DANIEL W. LONG and ARTHUR J. ACHENBACH Dictated Date dictated 8/3/72

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

KENNETH ROHL in which LUCCHETTI confided in ROHL that he was considering perpetrating bank robberies in Suffolk County at a future date.

LUCCHETTI stated that ROHL reminded him that bank robbery was a federal offense and that ROHL also cautioned him to be very selective with respect to choosing his associates for the above criminal activities in the event he did decide to rob banks.

LUCCHETTI advised that prior to March 9, 1970, he had a conversation with ROHL in which he stated that he told ROHL that he was going to commit a crime and that he had hoped to obtain a large amount of money that had to be "washed". ROHL, according to LUCCHETTI, questioned LUCCHETTI about the estimated size of the money that had to be he might obtain and after determining the amount that could be anticipated told LUCCHETTI that he could handle the "washing" or the exchange of currency for LUCCHETTI.

LUCCHETTI advised that after the bank was robbed, he acquired all of the "loot" taken in this robbery. He stated that he then contacted KENNETH ROHL and made arrangements for a meeting.

LUCCHETTI advised that on or about March 11, 1970, he met with ROHL at the Pioneer Diner located in Babylon, New York. LUCCHETTI stated that pursuant to the arrangements made previously he gave to ROHL an envelope containing $20,000.00 of the "loot" taken in the bank robbery of March 9, 1970.

LUCCHETTI stated that ROHL then gave to him an envelope containing $18,000.00 in "washed" money or exchange money.

LUCCHETTI stated that whenever he was about to "pull a big score" he would always contact ROHL to "put him on stand by" in the event ROHL's services should be needed on an emergency basis.

14-B

LUCCHETTI stated that when he gave the $20,000.00 to ROHL on or about March 11, 1970, MATTY SANTORO was parked in an automobile parked outside of the above diner.

LUCCHETTI stated that after the bank robbery and before the $20,000.00 was given to ROHL, he had a conversation with ROHL at which time ROHL commented to him, apparently in reference to a newspaper account of the robbery, "I see you were busy."

LUCCHETTI stated that when he gave the $20,000.00 to KENNETH ROHL after the robbery, ROHL knew that this money came from the bank robbery of March 9, 1970.

LUCCHETTI stated that he used portions of the $18,000.00 that he obtained from ROHL to "take care of" CHAFFIN and GREENMEIER for their role in this bank robbery.

LUCCHETTI advised that several days after this bank robbery, he gave to JOHN GREENMEIER $5,000.00 as his share in the bank robbery. He advised that he had learned that GREENMEIER gave some of the proceeds from this bank robbery to a white male by the name of PAUL.

PAUL according to LUCCHETTI married JOHN GREENMEIER's sister. PAUL is between thirty and forty years of age and is by occupation a truck driver. LUCCHETTI stated that when GREENMEIER picked up his share of the "loot" PAUL came to Suffolk County with GREENMEIER but was allegedly not present when LUCCHETTI gave GREENMEIER the $5,000.00. LUCCHETTI stated that after this robbery PAUL purchased a house and that PAUL allegedly used proceeds from this bank robbery in purchasing this house.

LUCCHETTI stated that PAUL and JOHN GREENMEIER pulled many jobs together and that PAUL knew when he purchased this house that the money given to him by GREENMEIER came from a bank robbery.

14-C

A 158

Date of transcription 8/3/72

CHARLES TUCCINARDI was interviewed, at his own request, at the Suffolk County [illegible] in Riverhead, New York by Special Agents DANIEL H. LONG and ARTHUR J. ACHTSCHIN.

TUCCINARDI was furnished by SA DANIEL H. LONG with an "Advice of Rights" form which he signed after reading same [illegible] stated also he understood his rights as set forth in the above form. He advised that he did not desire the services of an attorney since he was now presenting himself.

Tuccinardi was advised by SA DANIEL H. LONG that he could [illegible] to an arrest on [illegible], 1970 cited robbery of the Security National Bank located at 318 New York Avenue, Huntington, New York.

He advised that this bank was robbed during the evening hours of March [illegible], when [illegible] robbery. He stated that he [illegible] on a prior robbery. He stated that [illegible] actually went into the bank [illegible] entered when in fact [illegible] the plans to rob this bank.

[illegible] stated that prior to this robbery he elected good one to rob [illegible] visits to his cousin who lived nearby.

Tuccinardi stated that prior to this robbery he elected attorney [illegible] to be ready to "cash" some money and to stay by [illegible] to be picked by Tuccinardi. Tuccinardi stated to HOWE when they and his associates were going to rob a bank prior to March 20, 1970.

Tuccinardi stated that over the weekend of March 17 - 22, 1970 he made arrangements to meet with HOWE the following week.

He stated [illegible] envelope containing $25,000.00. Tuccinardi stated that this envelope containing $25,000.00 was given to him at the Pioneer Diner pursuant to the arrangements made by him and HOWE over the weekend of March 22, 1970 and that this envelope contained the majority of the currency taken in the bank robbery.

Interviewed on 8/3/72 at Riverhead, New York File # NY 91-8493

By SA DANIEL H. LONG Date dictated 8/3/72

SA ARTHUR J. ACHTSCHIN:cmk

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A 151

14-D

[redacted], according to [redacted] made $1500.00 on this "deal". [redacted] stated that portions of the "washed" money or the exchange money furnished by [redacted] was subsequently used by him to pay off [redacted] and [redacted] for their role in this bank robbery.

[redacted] stated that when [redacted] was given the above $15,000.00 by [redacted] knew that it came from this robbery.

14-E

Date of transcription 8/5/72

CHARLES LUCCHETTI was interviewed, at his own request, at the Suffolk County Jail in Riverhead, New York by SAs DANIEL W. LONG and ARTHUR J. ACHENBACH.

LUCCHETTI was furnished by SA DANIEL W. LONG with an "Advice of Rights; Waiver of Rights" form which he signed after reading same. LUCCHETTI stated that he understood his rights as set forth in the above form. He advised that he did not desire the services of an attorney since he was now representing himself.

LUCCHETTI was advised by SA DANIEL W. LONG that he would be questioned in reference to the April 20, 1970 armed robbery of the Security National Bank located at 162 New York Avenue, Halesite, New York.

LUCCHETTI advised that this bank was robbed by ROBERT NICHOLAS CHAFFIN and JOHN MARK GREENBERGER. He advised that he assisted CHAFFIN and GREENBERGER in making the pre bank robbery preparations.

LUCCHETTI stated that prior to this robbery he alerted attorney KENNETH ROHL to be ready to wash some money and to be available should his services be needed by LUCCHETTI.

LUCCHETTI stated that after this bank robbery, KENNETH ROHL was given an envelope containing $15,000 in cash from this robbery to "wash" or exchange. ROHL received $1,500 for "washing" this money.

LUCCHETTI advised that he used portions of the exchange money received from ROHL to pay off CHAFFIN and GREENBERGER for their role in this bank robbery. LUCCHETTI stated that ROHL knew that the money given to him in the envelope came from this bank robbery.

LUCCHETTI stated that several weeks after this robbery, at GREENBERGER's request, he met with GREENBERGER and a half-brother or step-brother of GREENBERGER at the Betty-Lin or Betty Lynn Diner in Linden, New Jersey.

LUCCHETTI stated that on this occasion he gave to GREENBERGER his share of the loot from this bank robbery. LUCCHETTI

Interviewed on 8/3/72 at Riverhead, New York File # NY 91-8597

by SA DANIEL W. LONG / SA ARTHUR J. ACHENBACH:mck Date dictated 8/3/72

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14-P

stated that he gave to GREENBERGER his share of the "loot" which came to $5,000. LUCCHETTI stated that when he gave this money to GREENBERGER, GREENBERGER told his half-brother or step-brother "to put this money in the safe deposit box with the rest of the money".

LUCCHETTI stated that GREENBERGER's half-brother or step-brother knew that this money came from a bank robbery and that he had in the past, been holding proceeds from GREENBERGER's criminal activities.

LUCCHETTI described GREENBERGER's half-brother or step-brother as being a former police officer who had been the "tipster" for many crimes engaged in by GREENBERGER and his brother-in-law PAUL.

LUCCHETTI stated that GREENBERGER's half-brother or step-brother also [illegible] he used to work as a police officer and that the above safe deposit box could be located in this same bank.

LUCCHETTI stated that the above safe deposit box is in the name of GREENBERGER's half-brother or step-brother.

14-6

He advised that after the above transaction was completed he and ROHL left the Pioneer Diner. He stated that when ROHL left the above Diner he was carrying the manilla envelope containing the $15,000.00 of "loot" taken in this bank robbery.

Date 8/3/72

CHARLES LUCCHETTI was interviewed, at his own request, at the Suffolk County Jail in Riverhead, New York by Special Agents DANIEL W. LONG and ARTHUR J. ACHENBACH.

LUCCHETTI was furnished by Special Agent DANIEL W. LONG with an "Advice of Rights; Waiver of Rights" Form which he signed after reading same. LUCCHETTI stated that he understood his rights as set forth in the above form. He advised that he did not desire the services of an attorney since he was now representing himself.

LUCCHETTI was advised by Special Agent LONG that he would be questioned in reference to the December 21, 1970 armed robbery of the First National Bank of Bayshore, located at 340 Howells Road, Bayshore, New York.

Prior to any questions being asked of LUCCHETTI, Special Agent LONG reminded LUCCHETTI that he had a pending appeal motion before the United States Supreme Court.

LUCCHETTI stated that he was aware of this, but that he still wanted to cooperate since it was his firm belief that his appeal "would be denied anyway."

LUCCHETTI advised that this bank was robbed by JACK DEMSEY and DAVID WILLIAMS and that he, LUCCHETTI, planned this bank robbery. He advised that he and MATTY SANFORD assisted DEMSEY and WILLIAMS in the commission of this robbery.

LUCCHETTI stated that prior to this bank robbery, he alerted Attorney KENNETH KOHL to be ready to "wash" some money and to stand by should his services be needed by LUCCHETTI. LUCCHETTI stated that KOHL knew that he and his associates were going to rob a bank prior to December 22, 1970.

On 8/3/72 at Riverhead, New York File # NY 91-9596

by SA ARTHUR J. ACHENBACH
SA DANIEL W. LONG:lan Date dictated 8/3/72

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14-1

A 15

LUCCHETTI stated that after this bank robbery he acquired the "loot" taken in this robbery. He stated that $20,000.00 of the "loot" taken in this robbery was subsequently placed in an envelope and that this envelope containing the $20,000.00 was then given to ROHL to "wash" or exchange. He stated that this envelope was given to ROHL at the Pioneer Diner several days after the bank robbery.

LUCCHETTI stated that he used portions of the exchange currency received from ROHL to "Take Care of" the other individuals who robbed or assisted in this robbery. LUCCHETTI advised that ROHL made $2,000 on this transaction.

LUCCHETTI advised that ROHL knew that this $20,000 came from this bank robbery when he received it.

LUCCHETTI advised that ROHL received money to "wash" on four different occasions and that on three of these occasions he personally gave the envelope to ROHL. On the otheroccasion, MATTY SANDORO gave the envelope to ROHL.

LUCCHETTI stated that ROHL "washed" or exchanged money for him following the March 9, 1970 and December 21, 1970 armed robberies of the First National Bank of Bayshore and the March 20, 1970 and April 20, 1970 armed robberies of the Security National Bank.

LUCCHETTI stated that on the occasions that he personally gave the envelopes to ROHL, MATTY SANDORO was parked in a car outside of the Pioneer Diner.

14-J

Date of transcription 8/11/72

On August 8, 1972, CHARLES LUCCHETTI was interviewed at the Suffolk County Jail in Riverhead, New York.

The contents of the "Advice of Rights; Waiver of Rights" form were orally called to LUCCHETTI's attention by Special Agent DANIEL W. LONG. LUCCHETTI advised that he understo his rights as set forth in the above form. He advised that he did not need the services of an attorney since he was representing himself.

LUCCHETTI was advised by Special Agent LONG that he would be questioned in reference to the March 9, 1970, armed robbery of the First National Bank of Bay Shore located at 340 Howells Road, Bay Shore, New York.

LUCCHETTI advised that he, GREENBERGER and CHAFFIN robbed the above bank and that they obtained a little over $20,000 in cash as a result of this robbery.

He advised that after this robbery he took possession of all of the "loot".

He stated that after the robbery MATTY SANTORO, at his direction, counted out $10,000 of the "loot" taken in this robbery. He advised that SANTORO then placed this money in a large manila envelope.

LUCCHETTI advised that several days after this bank robbery, on or about March 11, 1970, he and SANTORO, by a previous arrangement, drove to the Pioneer Diner in Babylon, New York.

He advised that after he and SANTORO arrived at the Pio Diner, he left the car and that SANTORO remained in the car.

LUCCHETTI advised that when he left the car he took wit him the large manila envelope containing the majority of the loot taken in this robbery.

Interviewed on 8/8/72 at Riverhead, New York File # NY 91-8452

by SA DANIEL W. LONG/lec Date dictated 8/8/72

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158 Appendix 15-A

LUCCHETTI stated that he then met with KENNETH ROHL and gave to him the manila envelope containing the majority of the loot taken in this robbery in the amount of $20,000.

LUCCHETTI stated that in return ROHL gave to him a smaller white envelope containing $8,000 in one hundred dollar bills.

LUCCHETTI stated that after the above transaction took place, in the evening, on or about March 11, 1970, he and ROHL left the Pioneer Diner together and that when ROHL left the Pioneer Diner he was carrying the manila envelope containing the $20,000 in "loot" taken in this robbery.

He advised that he and SANTORO then left the Pioneer Diner parking area and that ROHL subsequently drove off in his own car.

LUCCHETTI advised that SANTORO was aware of the fact that ROHL received $20,000 of the loot taken in this robbery to "wash".

LUCCHETTI stated that after he was released from the Suffolk County Jail in Riverhead, New York, in 1969 and before March 9, 1970, he, [redacted] and CHAFFIN were involved in several local crimes and that these local criminal activities were used by him and [redacted] to evaluate CHAFFIN before CHAFFIN was asked by them to participate in a bank robbery.

LUCCHETTI stated that ROHL knew of these local criminal activities and that when CHAFFIN was arrested in late February or March of 1970 [redacted] Suffolk County Police Department, ROHL represented CHAFFIN.

LUCCHETTI stated that CHAFFIN at the time of this arrest was "broke" and that CHAFFIN, a short time after his arrest, allegedly gave to ROHL $2,500. LUCCHETTI stated that this money that allegedly was given to ROHL by CHAFFIN was money that CHAFFIN had been given for his participation in a bank robbery.

15-B

LUCCHETTI stated that he had an appearance in the local Suffolk County Court in Riverhead, New York, on August 8, 1972, and that he met KOHL at this time.

KOHL volunteered to appear as a witness for LUCCHETTI in the event LUCCHETTI wanted to use him as a witness.

15-C

Date of transcription 8/8/72

On August 8, 1972, CHARLES LUCCHETTI was interviewed at the Suffolk County Jail in Riverhead, New York.

The contents of the "Advice of Rights; Waiver of Rights" form were orally called to LUCCHETTI's attention by SA DANIEL W. LONG.

LUCCHETTI advised that he understood his rights as set forth in the above form. He advised that he did not need the services of an attorney since he was representing himself.

LUCCHETTI was advised by SA LONG that he would be questioned in relation to the March 20, 1970 armed robbery of the Security National Bank located at 162 New York Avenue, Halesite, New York.

LUCCHETTI advised that he, GREENHALGH and CHAFFIN were involved in this bank robbery and that they obtained a little over $16,000.00 as a result of this robbery.

LUCCHETTI advised that after this robbery he took possession of all of the "loot" taken in this robbery.

He stated that after this robbery PATTY SANTORO, at his direction, counted out $15,000.00 of the "loot" taken in this robbery.

He advised that SANTORO then placed this money in a large manilla envelope.

LUCCHETTI stated that this robbery took place on a Friday night and that following the weekend SANTORO, at his direction gave the $15,000.00 to ROHL at the Pioneer Diner in Babylon, New York.

LUCCHETTI stated that ROHL then gave to SANTORO an envelope containing "clean money" and that SANTORO then gave the "clean money" to him.

Interviewed on 8/8/72 at Riverhead, New York File # NY 91-8498

by SA DANIEL W. LONG:ntv Date dictated 8/8/72

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15-D

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 8/8/72

On August 8, 1972, CHARLES LUCCHETTI, was interviewed at the Suffolk County Jail in Riverhead, New York.

The contents of the "Advice of Rights; Waiver of Rights" form were orally called to LUCCHETTI's attention by SA DANIEL W. LONG. LUCCHETTI advised that he understood his rights as set forth in the above form.

He advised that he did not need the services of an attorney since he was representing himself.

LUCCHETTI was advised by SA LONG that he would be questioned in reference to the April 20, 1970 armed robbery of the Security National Bank, located at 162 New York Avenue, Halesite, New York.

LUCCHETTI stated that CHAFFIN and GREENMEIER robbed this bank with his prior knowledge and assistance. He advised that to the best of his knowledge this bank was robbed just before closing time on April 20, 1970 and that about $18,000.00 was taken in this robbery.

He advised that after this robbery he took possession of the "loot" taken in this robbery.

He stated that after this robbery MATTY SANTORO, at his direction, counted out $15,000.00 of the loot taken in this robbery.

He advised that SANTORO then placed this money in a large manilla envelope.

LUCCHETTI stated that within several days after this robbery, by previous arrangement, he and SANTORO drove to the Pioneer Diner in Babylon, New York.

He advised that he went into the Pioneer Diner alone and gave to ROHL the $15,000.00 in the manilla envelope. In return, ROHL gave to him an envelope containing "clean money".

8/8/72 Riverhead, New York File # NY 91-8597-81

Interviewed on

SA DANIEL W. LONG/mtv Date dictated 8/8/72

by

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15-E

He advised that after the above transaction was completed he and ROHL left the Pioneer Diner. He stated that when ROHL left the above Diner he was carrying the manilla envelope containing the $15,000.00 of "loot" taken in this bank robbery.

A 16

15-F

Date of transcription 8/8/72

On August 8, 1972, CHARLES LUCCHETTI was interviewed at the Suffolk County Jail in Riverhead, New York.

The contents of the "Advice of Rights; Waiver of Rights" form were orally called to LUCCHETTI's attention by SA DANIEL W. LONG. He advised that he understood his rights as set forth in the above form.

He advised that he did not need the services of an attorney since he was representing himself.

LUCCHETTI was advised by SA LONG that he would be questioned concerning the December 21, 1970 armed robbery of the First National Bank of Bay Shore located at 340 Nevells Road, Bay Shore, New York.

LUCCHETTI advised that he, JACK DEMPSEY, DAVID WILLIAMS AND MATTY SANTORO robbed this bank and that they obtained about $25,000 as a result of this robbery.

He advised that WILLIAMS and DEMPSEY actually robbed the bank and that he and SANTORO assisted them.

He advised that after DEMPSEY and WILLIAMS robbed the bank they met with him a short distance from the bank and gave to him the guns and the "loot" taken in this robbery.

LUCCHETTI stated that subsequent to the robbery MATTY SANTORO at his direction counted out $20,000.00 of the "loot" taken in this robbery.

He advised that SANTORO then placed this money in a large manilla envelope.

LUCCHETTI states that within several days after this robbery and before Christmas of 1970, by prior arrangement, he and SANTORO drove to the Pioneer Diner in Babylon, New York.

He advised that he went into the Pioneer Diner and met with KENNETH ROHL. LUCCHETTI stated that he gave to ROHL the manilla envelope containing the $20,000 and took from ROHL an envelope containing the "clean money".

Interviewed on 8/8/72 at Riverhead, New York File # NY 91-9596

by SA DANIEL W. LONG:mtv Date dictated 8/8/72

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He advised that after this transaction took place he and ROHL left the above Diner. This meeting with ROHL took place in the evening and LUCCHETTI stated that SANTORO remained in the car while the above transaction took place. He advised that when he and ROHL left the Diner ROHL was carrying the manilla envelope containing the $20,000.00.

LUCCHETTI stated that in early November of 1970 ROBERT CHAFFIN was arrested by the Suffolk County Police Department on various possession of weapons charges.

LUCCHETTI stated that following CHAFFIN's arrest he began to become suspicious of CHAFFIN and thought that CHAFFIN was thinking about cooperating with the police.

LUCCHETTI advised that after CHAFFIN's arrest in November of 1970 he decided not to use CHAFFIN on anymore bank robberies and subsequently decided to use WILLIAMS and DELPHEY in this robbery.

15-H

Date 8/14/72

On August 14, 1972, CHARLES LUCCHETTI was interviewed at the Suffolk County Jail in Riverhead, New York, by Special Agents DANIEL W. LONG and DONALD B. WIEKE. He was furnished by Special Agent LONG with an "Advice of Rights' Waiver of Rights" Form which he executed after reading same.

He advised that he understood his rights as set forth in the above form. He stated that he did not desire the services of an attorney since he was now acting as his own attorney.

He was told by Special Agent DANIEL W. LONG that he would be questioned concerning any information that he could recall that was related, directly or indirectly, to the December 21, 1970 armed robbery of the First National Bank of Bayshore, located at 240 Howells Road, Bayshore, New York.

He stated that when CHAFFIN was arrested in February of 1970 CHAFFIN was represented by KENNETH KOHL. He advised that when CHAFFIN was arrested in November of 1970, KENNETH KOHL did not represent CHAFFIN.

LUCCHETTI recalled having a conversation with KOHL after the November 1970 arrest of CHAFFIN in which KOHL told him "to be careful about CHAFFIN" and suggested to LUCCHETTI that CHAFFIN may be cooperating with the authorities. KOHL, according to LUCCHETTI, advised that CHAFFIN was released on his own recognizance.

LUCCHETTI stated that he contacted CHAFFIN immediately following his release on the gun charges, which charges were filed against CHAFFIN in November of 1970, and had a conversation with CHAFFIN.

CHAFFIN told LUCCHETTI not to worry but CHAFFIN did indicate to LUCCHETTI that he "did give up a couple of guys on the guns."

On 8/14/72 at Riverhead, New York File # NY 91-9596

by SAS DONALD B. WIEKE and DANIEL W. LONG/DWL:lma Date dictated 8/14/72

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A 164

Appendix 16-A

NY 91-9596

LUCCHETTI stated that following CHAFFIN's arrest in November of 1970, CHAFFIN was contacted by several detectives from the Suffolk County District Attorney's Office. LUCCHETTI stated that from early, 1971 up until CHAFFIN's death on or about February 6 or 7, 1971, CHAFFIN was regularly contacted by representatives of the Suffolk County District Attorney's Staff.

LUCCHETTI advised that he knew about these contacts because CHAFFIN was keeping him advised as to their inquiries and as to what CHAFFIN was discussing with them.

LUCCHETTI advised that there came a time in late January of 1971 or early February of 1971 when KENNETH ROHL developed information that CHAFFIN was allegedly going to make an appearance before a Suffolk County Grand Jury in reference to his criminal activities.

ROHL, according to LUCCHETTI, was very concerned about CHAFFIN's future Grand Jury appearance and allegedly remarked "do what you have to do" and "take care of business."

LUCCHETTI advised that ROHL 'may have" obtained the information concerning CHAFFIN's proposed Grand Jury appearance from a Suffolk County District Attorney Staff member by the name of CONLON.

LUCCHETTI stated that KENNETH ROHL represented CONLON's son in a criminal matter in the late 1960's and that LUCCHETTI stated that it was his understanding that ROHL did not take a fee from CONLON's son for his legal services in reference to this case.

LUCCHETTI stated that CONLON and ROHL are very good friends.

16 B

/1-9596

LUCCHETTI stated that KOHL was given $5,000 in one hundred dollar bills for the above "tip."

LUCCHETTI stated that when JACK KINSEY was arrested in April of 1971, KOHL represented KINSEY on the local charges.

LUCCHETTI stated that KOHL has excellent "connections" in Suffolk County, and not only represented him but also represented most of the individuals that LUCCHETTI was criminally involved with.

16 C

DERAL BUREAU OF INVESTIGAT

Date 8/24/72

CHARLES LUCCHETTI, after executing an "Advice of Rights; Waiver of Rights" form, was interviewed on August 14, 1972. He advised that he understood his rights as set forth in the above form and that he did not desire the services of an attorney since he was now representing himself.

CHARLES LUCCHETTI, who is presently confined at the Suffolk County Jail in Riverhead, New York(NY), during the course of another interview volunteered the following information:

LUCCHETTI advised that in the late 1960's KENNETH ROHL attempted to solicit $10,000 from him as a donation to the Republican Party.

LUCCHETTI advised that in or about the year 1968 KENNETH ROHL received $25,000 of the "loot" taken in a Saint James, NY burglary. LUCCHETTI stated that upwards of $75,000 was taken in this burglary.

LUCCHETTI stated that ROHL, to the best of his information, has in his possession tools and a tool box valued at $1,500 which tools and tool box came from a local Suffolk County burglary.

On 8/14/72 at Riverhead, New York File # NY 87-

by SAS DONALD B. WIEPKE AND DANIEL W. [illegible] Date dictated 8/18/72

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A 34169 16-D

Date dictated 8/31/72

CHARLES LUCCHETTI was furnished with an "Advice of Rights; Waiver of Rights" form, which he executed after reading same. He advised that he understood his rights as set forth in the above form, and that he did not desire the services of an attorney since he was now representing himself.

LUCCHETTI was told by Special Agent DANIEL W. LONG that he would be questioned in reference to the December 21, 1970 armed robbery of the First National Bank of Bayshore, located at 340 Howells Road, Bayshore, New York, and to matters directly or indirectly related to this bank robbery.

LUCCHETTI stated that KENNETH NOHL, in his presence, instructed HENRY SANDRO as to what he wanted SANDRO to say on the witness stand prior to the time that SANDRO appeared as a defense witness for LUCCHETTI in this robbery matter, and that NOHL knew when he gave these instructions to SANDRO that he was instructing SANDRO to commit perjury.

LUCCHETTI stated that after CHAPPIN was found murdered, KENNETH NOHL was very much concerned, and that he subsequently received a letter which he personally delivered to the Suffolk County District Attorney's Office and the Suffolk County Police Department, which letter contained a notice that he was representing LUCCHETTI and that LUCCHETTI was not to be interviewed with respect to the CHAPPIN murder without his consent.

LUCCHETTI also stated that during his bank robbery trial "when things began to look bad" for him, NOHL gave him instructions as to how to go about discharging him in the hope that Judge FISCHER might grant LUCCHETTI a mistrial.

Interviewed on 8/25/72 at Riverhead, New York File # 91-9596

SA DANIEL W. LONG
SA DONALD B. WIEDER/pmm Date dictated 8/25/72

By

Appendix 17-A

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 8/31/72

On August 25, 1972, CHARLES LUCCHETTI was interviewed at the Suffolk County Jail in Riverhead, New York, after he had executed an "Advice of Rights; Waiver of Rights" form. He stated that he understood his rights as set forth in the above form and that he did not desire the services of an attorney since he was now representing himself.

LUCCHETTI, during the course of another interview, furnished the following information:

LUCCHETTI stated that several years ago, in or about the year 1968, Attorney KENNETH KOHL received $25,000.00 of the loot taken in a burglary in Saint James, New York.

LUCCHETTI stated that the burglary was a substantial one and that the money was taken from the basement of a residence located adjacent to or near a liquor store located on Lake Avenue or Lakeview Avenue, in Saint James, New York.

LUCCHETTI stated that he did not know how much the victim reported to the police as having been taken but that he "knew that $75,000.00 in old bills" was taken.

LUCCHETTI stated that subsequent to this burglary he and MATTY SANFORD obtained a safe deposit box in an Elizabeth, New Jersey bank.

Interviewed on 8/25/72 at Riverhead, New York File # NY 97-

by SA DANIEL W. LONG and SA DONALD B. WILDKE/jtc 8/25/72

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A 171

17-B

On or about August 23, 1968, the residence of MARIE FAGIANO located at 420 Lake Avenue, St. James, New York, was burglarized and $71,000.00 in cash was taken. This currency had apparently been saved by MARIE FAGIANO and other members of her family over a 30 year period and the currency taken was "old currency".

A 172 17-C

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 9/7/72

CHARLES LUCCHETTI was furnished with an "Advice of Right Waiver of R ghts" form which he executed after reading same. He advised that he understood his rights as set forth in the above fo He stated that he did not require the services of an attorney sinc he was now representing himself.

LUCCHETTI advised that WALTER MILLER, the son of JOAN MILLER, was confined at the Suffolk County Jail in Riverhead, New York during July of 1972 after havin; been arrested by the Suffolk County Police Department on an "unauthorized use of a motor vehicl charge.

LUCCHETTI described MILLER as a kid that has been "kicke around" and a pretty "vicious kid".

The candid photographs taken in the February 16, 1972 armed robbery of the National Bank of North America located at 479 Jericho - Hicksville Road, Jericho, New York; the March 24, 1972 armed robbery of the Franklin National Bank located at 225 Broadwc New York; and the June 21, 1972 armed robbery of the Suffolk Count Federal Savings and Loan Association located at 269 Middle Country Road, Coram, New York were displayed to LUCCHETTI.

LUCCHETTI selected the photographs in each of the above three robberies that depicted the masked male holding the two guns and stated that the body build of MILLER resembled the body build of the individual depicted in each of the three sets of photograp

LUCCHETTI stated that LAWRENCE RUSSO allegedly put up t bail money for MILLER at the time of his release from the Suffolk County Jail. LUCCHETTI advised that WALTER MILLER is residing wi LAWRENCE RUSSO at the present time and that since MILLER's releas from the Suffolk County Jail MILLER has been very close to LAWREN RUSSO.

LUCCHETTI advised that prior to July of 1972 MILLER was not very close to RUSSO.

LUCCHETTI stated that since December of 1971 or January of 1972 LAWRENCE RUSSO has had access to over $100,000.00 and tha

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Interviewed on 9/6/72 at Suffolk County Jail Riverhead, New York File # NY 91-11447 NY 91-11294 NY 91-11763

by SA DANIEL W. LONG SA DONALD B. MILNES:ank 141 Date dictated 9/6/72

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Appendix 18A

he strongly suggests that LAWRENCE RUSSO has been engaged in, directly or indirectly, the crime of bank robbery.

LUCCHETTI stated that RUSSO is using the name LAWRENCE PANTORI and that he recently purchased or is in the process of purchasing a new home in Corona, New York.

LUCCHETTI stated that RUSSO, his wife and children, and one LYNN SCHWEITZER (phonetic) during early 1972 visited Orlando, Florida at which time they went to "Disneyland".

LUCCHETTI stated that while on this Florida trip RUSSO allegedly purchased some hand guns and that he used a fictious name and displayed a fictious New York Driver's License to the gun dealer when he purchased the hand guns.

LUCCHETTI stated that in late August of 1972 LAWRENCE RUSSO had a birthday party at his residence for one of his children. On this occasion LAWRENCE RUSSO allegedly asked ELAINE SCHWEITZER (phonetic) if he could use her name to buy some real estate that he was interested in.

18 B

A 174

FEDERAL BUREAU OF INVESTIGATION

Date 9/11/72

On September 9, 1972, Mrs. CHARLES LUCCHETTI was contacted at her own request. She stated that her husband CHARLES LUCCHETTI desired to be interviewed as soon as possible.

On 9/9/72 at Telephonic File # NY 91-11918

143 .

by SA DANIEL W. LONG/lp Date dictated 9/11/72

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A 175 Appendix 19

FEDERAL BUREAU OF INVESTIGATION

Date 9/11/72

On September 10, 1972, CHARLES LUCCHETTI was interviewed at the Suffolk County Jail, Riverhead, New York.

LUCCHETTI was furnished with an "Advice of Rights; Waiver of Rights" form which he executed after reading same. He stated that he understood his rights as set forth in the above form and that he did not desire the services of an attorney since he was now representing himself.

He advised that he had developed information that LAWRENCE RUSSO and CARMINE SANTILLO had robbed a series of banks on Long Island in 1971 and 1972.

He advised that on September 5, 1972 CATHERINE SANTILLO and WILMA RUSSO delivered to BLAINE SCHNEIDER (Phonetic) at 66 West Pine Street, Islip, New York, a package containing approximately $9,000.00 in cash as well as several rings. LUCCHETTI advised that this money allegedly came from the Marine Midland Tinker National Bank armed robbery of July 26, 1972.

LUCCHETTI advised that LAWRENCE RUSSO had recently sold his new Cadillac and that he is making plans to go to Canada with CARMINE.

He stated that LARRY RUSSO allegedly got $6,000.00 for his Cadillac and that he believes that CARMINE SANTILLO was the individual holding the two guns in the candid photographs taken during the commission of the March 24, 1972 armed robbery of the Franklin National Bank in Brentwood, New York.

LUCCHETTI advised that LAWRENCE RUSSO is afraid of being "Ripped Off" and that RUSSO is "very suspicious" of CARMINE.

On 9/10/72 at Riverhead, New York File # NY 81-11918

by SA DANIEL W. LOCH:lp Date dictated 9/10/72

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Appendix 7 of A

NY 91-11918

LUCCHETTI stated that in some of these bank robberies LARRY "went into the bank" and that CARMINE and LARRY have the same general build.

LUCCHETTI advised that an individual by the name of "BRIAN" is very close to LARRY and that "BRIAN" is allegedly involved in these robberies or knows a lot about them.

A 137

206

FEDERAL BUREAU OF INVESTIGATION

Date 9/27/72

On September 27, 1972, CHARLES LUCCHETTI was interviewed at the Suffolk County Jail in River Head, New York. LUCCHETTI executed an "Advice of Rights; Waiver of Rights" form. He advised that he understood his rights as set forth in the above form and that he did not require the services of an attorney.

He advised that he was not in the possession of any information in reference to the present whereabouts of LAWRENCE RUSSO and CARMINE SANTILLO.

On 9/27/72 at River Head, New York File # NY 91-11447

146

by SA DANIEL W. LONG:ks Date dictated 9/27/72

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Appendix at 21

FD-302 (Rev. 4-15-64)

FEDERAL BUREAU OF INVESTIGATION

Date 10/10/72

On October 1, 1972, Special Agents (SAs) DANIEL W. LONG and ARTHUR J. ACHENBACH contacted CHARLES LUCCHETTI at the Suffolk County Jail in riverhead, New York.

LUCCHETTI requested that arrangements be made for Mr. PATRICK HENRY of the Suffolk County District Attorney's Office to contact him on October 4, 1972

On 10/3/72 at Riverhead, New York File # NY 91-9590

by SAs DANIEL W. LONG and ARTHUR J. ACHENBACH:rmn Date dictated 10/3/72

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A 179 Appendix 22

FEDERAL BUREAU OF INVESTIGATION

Date 10/5/72

On October 2, 1972, CHARLES LUCCHETTI was interviewed at the Suffolk County Jail in Riverhead, New York (NY).

He was furnished by SA DANIEL W. LONG with an "Advice of Rights; Waiver of Rights" form which he executed after reading same.

He advised that he understood his rights as set forth in the above form and that he did not desire the services of an attorney since he was now representing himself.

He advised that he has not developed any further information in reference to the whereabouts of LAWRENCE RUSSO and CARMINE ANTHONY SANTILLO.

On 10/2/72 at Riverhead, New York File # NY 91-11447

by SAS DONALD B. WIEBKE AND DANIEL W. LONG/DWL:cer 147 Date dictated 10/5/72

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A 180

Appendix 23

FD-302 (Rev. 4-15-64)

FEDERAL BUREAU OF INVESTIGATION

Date 10/11/72

CHARLES LUCCHETTI on October 4, 1972, met with Mr. PATRICK HENRY, Chief Trial Assistant, Suffolk County District Attorney's Office. This meeting took place at the Suffolk County Jail in Riverhead, New York, and was held at LUCCHETTI's request.

LUCCHETTI was furnished with an "Advice of Rights; Waiver of Rights" form which he executed after reading same. He advised that he understood his rights as set forth in the above form and that he did not desire the services of an attorney since he was representing himself.

LUCCHETTI, told Mr. Henry that he had information pertaining to various local crimes one of which was a local homicide. LUCCHETTI suggested that he was involved in this homicide with a prominent Suffolk County Attorney. LUCCHETTI talked to Mr. HENRY in a hypothetical fashion and desired to know from Mr. HENRY as to "what could be done" for him in the event he decided to cooperate fully with the Suffolk County Authorities.

Mr. HENRY did not make any commitments to LUCCHETTI and merely took this matter under advisement.

On 10/4/72 at Riverhead, New York File # NY 91-9506

SA DANIEL W. LONG:mm 10/4/72

by Date dictated

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Date 10/11/72

On October 4, 1972 CARMINE LUCCHETTI advised that LARRY RUSSO in March and April of 1972 visited Florida and while in Florida stayed at a Howard Johnson's Motel or Hotel in Orlando, Florida; the Deauville Hotel or Motel in Miami Beach, Florida; and the Ramada Inn in Fort Lauderdale, Florida.

On 10/4/72 at Richmond, New York File # NY 92-3[illegible]

by SA [illegible] Date dictated 10/[illegible]/72

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A 182

246

PLEASE [illegible]
THIS SLIP FROM EXHIBIT
NY 44-2154-11715

PHILIP S. CORSO
SHERIFF

SHERIFF'S DEPARTMENT

SUFFOLK COUNTY JAIL
Center Drive
Riverhead, N. Y. 11901

JAMES F. CLEARY
WARDEN

ADDRESSED TO

DATE 10/7/72

NAME F.B.I.

FROM Carlo Guarente

STREET & NO. [illegible]

TIER 4 S E

POST OFFICE Brooklyn, [illegible] N.Y.

Dear Sir:

I am writing this letter for assistance from your office. Civil Rights (Voters against the Administration of the Suffolk County Jail for violation of my Civil and Constitutional Rights as well as the 1964 Civil Rights Act) Cause and unusual punishment and mistreatment. I would like to think you in advance for what ever assistance you may be able to render me in this situation I remain

Most Respectfully
Carlo Guarente

Write on this side only

SCJ Form# 47

A 183

appendix 25

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

DATE: 10/16/72

TO : SAC, NEW YORK (44-2154)

FROM : SA ARTHUR J. ACHENBACH #28
BABYLON RA

SUBJECT: UNKNOWN OFFICIALS AT SUFFOLK COUNTY JAIL,
RIVERHEAD, NEW YORK;
CHARLES LUCCHETTI - VICTIM
SAMIEL FALBO - VICTIM
WILLIAM BRINLICH - VICTIM
EMILIO GONZALEZ - VICTIM
THOMAS LAND - VICTIM
WILLIAM A. GREY - VICTIM
LOUIS GUGLIELMO - VICTIM
JOHN OINES - VICTIM
CIVIL RIGHTS

On 10/11/72, 8 letters signed by above victims were received at Babylon RA, all dated 10/7 & 8/72 from above victims who are all inmates at Suffolk County Jail. It is also noted that all above inmates are located on tier 4SE at the jail and their complaint alleged that the jail maintains 10 "Torture chambers" [illegible] unruly prisoners are constantly threatened with being placed in them.

On 10/12/72, CHARLES LUCCHETTI was interviewed at the jail by SA DANIEL W. LONG and thewriter. He admitted that all the above letters were written by his friends as a form of harrassment against jail officials which conspiracy was his, LUCCHETTI's idea. He admitted that he in fact dictated the content of the letters that they were to write. LUCCHETTI stated further that he also sent a petition to the New York State Supreme Court containing the same allegations. He stated further that these letters were in the guise of a harrassment against jail officials, and he understood that no investigation would be undertaken regarding them. He added that he would inform his friends that the FBI had interviewed him but no further action was to be taken.

On 10/12/72, Warden JAMES CLEARY, Suffolk County Jail advised that the jail maintains 10 maximum security cells which are approved and constantly inspected by the NY Dept. of Corrections. He stated further that in the past two years they have only been used on 2 occasions; once when LUCCHETTI was there for 20 minutes and another inmate was placed there over night. He added that they are only used

AJA/

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Appendix 26A

NY 44-2154

for inmates who are inciting riots at the jail. KXXX

Warden CLEARY made available a photostat of the petition that LUCCHETTI sent to the Supreme Court. This photostat as well as the letters received from all the above persons will be maintained in the 1A section of this file.

In view of the fact that LUCCHETTI has admitted that the letters received in this matter were at his instigation that he understood no further action would be taken in this matter; that he sent similar petition to the NY Supreme Court; and the warden explained that the cells the inmates were complaining about are approved and inspected by the Dept of Corrections, no further action is being taken in this case and it is being closed administratively on the authority of the SAC.

FD-302 (Rev. 4-15-64)

FEDERAL BUREAU OF INVESTIGATION

Date 10/13/72

On October 12, 1972, CHARLES LUCCHETTI was interviewed at his own request, at the Suffolk County Jail in River Head, New York.

While being interviewed on another matter concerning alleged irregularities at the Suffolk County Jail he volunteered information to the effect that he had obtained several affidavits from inmate associates of his who were also former inmate associates of JACK DEMPSEY.

LUCCHETTI stated that these Suffolk County Jail inmate associates of his have allegedly given him affidavits in which they state that DEMPSEY allegedly told them that he had made "a deal" with the Government prior to the time that he testified against LUCCHETTI in this bank robbery case.

LUCCHETTI stated that he obtained these affidavits in early 1972 and that he was considering using these affidavits as a basis for a motion for a new trial since the information contained in these affidavits allegedly conflict with DEMPSEY's trial testimony.

On 10/12/72 at River Head, New York File # NY 91-9596

by SA DANIEL W. LONG and SA ARTHUR J. ACHENBACH Date dictated 10/12/72

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26 C

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA

-against- Criminal Folder

JOHN DOE #725,318

----------X

225 Cadman Plaza East
Brooklyn, New York

October 19, 1972

GRAND JURY MINUTES

Presented by:

EMANUEL A. MOORE, ESQ.
Assistant United States Attorney

Reported by:

Elizabeth A. Ng

Witness:

CHARLES LUCCHETTI

Appendix 27-A

MR. MOORE: Will you stand up before the foreman and take the oath, please.

THE FOREMAN: Will you raise your right hand. Do you solemnly swear that the evidence you are about to give this Grand Jury is the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

C H A R L E S L U C C H E T T I, after being sworn, assumed his seat as a witness and testified as follows:

EXAMINATION BY

MR. MOORE:

Q Will you state your name for the record, please?

A Charles Lucchetti.

Q Mr. Lucchetti, I want to read to you the advice to prospective defendants before a Grand Jury.

Mr. Lucchetti, I wish to advise you that prior to your giving testimony here today that you are a subject of an investigation presently being conducted by the Federal Grand Jury for the Eastern District of

27-B

New York.

Do you understand that?

A Yes.

Q The Grand Jury is inquiring into among other things, your conduct and relationship to one Kenneth Rohl.

Do you understand that?

A Yes.

Q I wish to further advise you that you are a prospective defendant and that anything you might say before the Grand Jury could be used against you in a later proceeding or proceedings.

Do you understand that?

A Yes.

Q Now, Mr. Lucchetti, you need not testify as to those matters which may tend to incriminate you. That is to say, you cannot be compelled to testify against yourself as is provided in the Fifth Amendment to the United States Constitution.

Do you understand that?

A Yes, I do.

Q Now, that is not to say however that you cannot testify before the Federal Grand Jury if you desire to do so. Nor, is it to say that you can refuse

27C

to testify as to matters that would incriminate persons other than yourself.

Do you understand that?

A Yes.

Q But as I have already stated to you, if the matters you would testify to would tend to incriminate yourself as well as others, you can refuse to testify and can assert your rights under the Fifth Amendment of the United States Constitution.

Do you understand that?

A Yes.

Q Mr. Lucchetti, prior to your giving testimony here today, let me advise you that you do have a right to consult with counsel of your own choice and if you cannot afford an attorney, the court will appoint one if you so desire.

Do you understand that?

A Yes, I do.

Q And you have considered whether you wanted counsel or not, is that correct?

A Yes, I have.

Q Mr. Lucchetti, you are testifying here voluntarily?

A Yes.

77-D

Q You are not under any duress or compulsion to testify before this Federal Grand Jury, is that correct?

A Yes.

Q Now, Mr. Lucchetti, I am now going to hand you a form known as a Waiver of Immunity from Prosecution and I ask you to sign it, please.

A Yes.

MR. MOORE: Mr. Foreman, can you please witness this Waiver?

THE FOREMAN: Yes.

Q Mr. Lucchetti, do you know one Kenneth Rohl?

A Yes, I do.

Q Who is Kenneth Rohl?

A He's an attorney in Suffolk County.

Q Was he formerly your attorney?

A Yes, he has been.

Q How long have you known Mr. Rohl?

A Since 1965.

Q Has he represented you on a number of occasions?

A Yes, he has.

Q Criminal and civil proceedings?

A Yes.

Q Did you ever have a retainer with Mr. Rohl?

A Yes.

Q You did. Now, Mr. Lucchetti, I bring you to March 9, 1970 which concerns a bank robbery that took place at the First National Bank of Bayshore, located at 340 Howells Road, Bayshore, New York, do you understand that?

A Yes.

Q Did you plan that particular bank robbery?

A Yes, I did.

Q Who was involved in that particular bank robbery with you?

A John Greenmeier and Robert Chaffin.

Q Could you tell us who conducted that particular bank robbery?

A Robert Chaffin and John Greenmeier went into the bank.

Q And robbed the bank, is that correct?

A Yes.

Q That was an armed robbery?

A Yes, it was.

Q And you planned that bank robbery with them,

is that correct?

A Yes, I did.

Q Subsequent to that bank robbery, did you ever have any conversations with your attorney Kenneth Rohl?

A Yes, I did.

Q Did you ever have any conversations with Mr. Rohl just prior to the March 9th bank robbery?

A Yes, I did.

Q Could you tell us what was the conversation you had with Kenneth Rohl prior to the bank robbery that took place on March 9, 1970 of the First National Bank of Bayshore located at 340 Howells Road?

A I was anticipating becoming involved in bank robberies and I discussed the Federal statutes involving bank robberies.

Q What did Mr. Rohl tell you?

A He told me that the Federal statute involved in bank robberies is the fact that the bank is federally insured by the Federal Deposit Insurance Corporation and this makes it a federal offense. The bank was not within it's a state offense and if it wasn't covered under the FDIC, itwas just a state charge of robbery.

Q Did you ever tell Kenneth Rohl that you intended to rob banks?

A Yes, I did.

Q Now, afterthat particular bank robbery, did you ever have a conversation with Kenneth Rohl concerning the washing of the money that you received from the bank robbery?

A Yes.

Q Could you tell us, do you know approximately how much money was received from that particular bank robbery?

A Over $20,000.

Q Did you take that $20,000 to Kenneth Rohl?

A I had taken the money to him in exchange, he would give me money back and because we felt that the money that we had taken from the bank was marked money and the bills were recorded and I did take money to him and met him and I gave him $20,000.

Q How much money did he give you back?

A $18,000.

Q Now, Kenneth Rohl know that money was from the bank robbery?

A No.

Q Not at that time he did not know?

A No.

Q Now, I bring your attention to a bank robbery that took place at the Security National Bank located in Halesite, New York on March 20, 1970. Do you recall that particular bank robbery?

A Yes, I do.

Q Did you plan that particular bank robbery?

A Yes, I did.

Q Who participated in that bank robbery with you?

A Robert Chaffin and John Greenmeier.

Q Did you have a conversation with Kenneth Rohl prior to that particular bank robbery?

A Yes, I did.

Q Will you tell the Grand Jury what was the conversation that you had with Mr. Rohl at that time?

A I called him up and told him to make himself available. If I needed him, that I would -- might be calling later on in the evening.

Q You actually went ahead and the bank was robbed, is that correct?

A Yes.

Q Did you have a conversation with Mr. Rohl after that bank robbery concerning the washing of the proceeds of the bank robbery?

A Yes, I did.

Q What was the conversation that you had with him?

A I told him how much money I had and we made arrangements for a meeting.

Q Do you know where that meeting took place?

A Yes. It took place at the Pioneer Diner in Babylon.

Q How much money was given to Mr. Rohl on that occasion?

A I didn't give Mr. Rohl.

Q You had sent somebody else to give Mr. Rohl the money?

A Yes.

Q Do you know how much was given to him?

A Yes, $15,000.

Q How much was given in return for that?

A $13,500.

Q Did Mr. Rohl know at that time whether the

27-J

money was in fact proceeds from the bank robbery?

A He was fully aware that I was involved in bank robberies, yes.

Q Could you tell us how was he fully aware that you were involved in bank robberies?

A After the first one and the exchange of the money, he had commented on a newspaper article.

Q What was the comment that he made?

A He says "I see you have been very busy. I read about it in the paper."

Q What was your response to him?

A I didn't have any response. I just shook my head.

Q Now, I bring your attention to a bank robbery that took place at the Security National Bank in Halesite, New York on April 20, 1976. Do you recall that particular bank robbery?

A Yes, I do.

Q Did you help plan that particular bank robbery?

A Yes, I did.

Q Who participated in that bank robbery?

A Robert Chaffin and John Greenmeier.

Q Did you have a conversation with Mr. Rohl

27-K

just prior to that particular bank robbery?

A Yes, I did.

Q What was that conversation?

A I again called him and told him to make himself available if I needed him. He told me that he would be available and I informed him that I would have some money for him, thatI would call him back to make the arrangements.

Q After the particular bank robbery, did you have a conversation with him?

A Yes, I did.

Q Was that concerning the washing of the proceeds of the bank robbery?

A Yes. Exchanging the money.

Q How much did you give Mr. Rohl on that occasion?

A $15,000.

Q How much was given in return?

A $13,500.

Q Who was involved in that exchange?

A Myself and Mr. Rohl.

Q So you personally was involved in that particular washing with Mr. Rohl?

A Yes.

27-L

Q Do you know where that particular transaction took place?

A Pioneer Diner in Babylon.

Q Babylon?

A Yes.

Q Now, Mr. Lucchetti, I bring you to a bank robbery that took place on the 21st of December, 1970 at the First National Bank of Bayshore.

Do you remember that particular one?

A Yes, I do.

Q Did you have a conversation with Mr. Rohl just prior to that particular bank robbery?

A Yes, I did.

Q What was the conversation that you had with him?

A To make himself available that I might need him and that if I needed him, I would call him.

Q You planned that particular bank robbery, is that correct?

A Yes.

Q Who did you plan that bank robbery with?

A Jack Dempsey and Dave Williams.

Q Subsequent to that particular bank robbery, did you happen to have a conversation with Mr. Rohl?

27-M

A Yes, I did.

Q Was there a washing of the proceeds of that particular bank robbery?

A Yes.

Q Could you tell us how much was given to Mr. Rohl in that occasion?

A $20,000.

Q How much did he give you in return?

A $18,000.

Q Did you personally participate in that washing at all?

A Yes, I did.

Q Was Mr. Rohl aware that the money that you gave him were proceeds of the bank robbery?

A Yes.

Q Are you saying that Mr. Rohl knew all along that the money you were giving him were proceeds from the bank robbery and he was then in turn giving you money in return, is that correct?

A That's right.

Q Mr. Lucchetti, were you convicted for that December 21, 1970 bank robbery located at the First National Bank of Bayshore?

A Yes, I was.

Q Is it a fact that Jack Dempsey and David Williams testified against you?

A That's true.

Q Who was the prosecutor on that case?

A You.

Q And you were subsequently sentenced, is that correct?

A Yes, I was.

Q How much did the Judge give you?

A Twenty years and $15,000 fine and five years on the second count.

Q Mr. Lucchetti, all these bank robberies including the December 21st bank robbery, were those armed robberies?

A Yes, they were.

Q Mr. Lucchetti, who was your attorney at the time of that trial that you were convicted on?

A Kenneth K. Rohl.

MR. MOORE: Thank you.

Are there any questions?

(No response.)

THE FOREMAN: You may be excused.

(Whereupon, the witness was excused and withdrew.)

FD-302 (REV. 11-27-70)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 6/3/74

On June 3, 1974, CHARLES LUCCHETTI telephonically contacted Special Agent DANIEL W. LONG "to say hello".

He advised that he "testified" on behalf of JULIE KLEIN and that he was optimistic for KLEIN in his bid for a new trial.

Interviewed on 6/3/74 at Miami, Florida File # Miami 91-4053-20

by SA DANIEL W. LONG/sky Date dictated 6/3/74

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A 202

Appendix 28

FD-302 (REV. 11-27-70)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 7/19/74

On July 19, 1974, CHARLES LUCCHETTI telephonically contacted Special Agent DANIEL W. LONG. He advised that he just wanted "to say hello" and that he will be eligible for parole in 1976.

He advised that he was in the possession of some information that pertained to the "illegal" activities of an attorney by the name of "BOBICK". He also stated that he was in the possession of some information that would be of interest to the Federal Narcotic authorities.

LUCCHETTI was told that SA LONG would make arrangements to have him interviewed in reference to the above.

Interviewed on 7/19/74 at Miami, Florida File # Miami 91-4053

by SA DANIEL W. LONG/jky Date dictated 7/19/74

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

1 20 Appendix 9

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

STELLA L. JACKSON, being duly sworn, says that on the 14th day of April, 1975, I deposited in Mail Chute Drop for mailing in the U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and State of New York, a n AFFIDAVIT IN OPPOSITION AND APPENDIX of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper directed to the person hereinafter named, at the place and address stated below:

H. Elliot Wales, Esq.
747 Third Avenue
New York, New York

Stella L Jackson

Sworn to before me this
14th day of April 1975

Notary [illegible]

Commission Expires March 30, 1976

AFFIDAVIT OF PERSONAL SERVICES

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

_____, being duly sworn, says that he is employed in the office of the United States Attorney for the Eastern District of New York. That on the _____ day of _____, he served a true copy of the annexed _____ on the office of _____ attorney for _____ herein, located at _____, Borough of _____, City of New York, by leaving a true copy of same with his clerk or other person in charge of said office.

Sworn to before me this
day of

_____

A 204

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
APR 17 1975
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

71 CR 849 ✓
75 CR 25

UNITED STATES OF AMERICA

-against-

CHARLES LUCCHETTI,

Defendant.

Memorandum of Decision and Order

This is a pro se [1] motion pursuant to Rule 32(c)(1) of the Federal Rules of Criminal Procedure, [2] to have the undersigned disqualify himself from presiding over the defendant's forthcoming trials.

---

[1] Although defendant was represented by counsel at the time this motion was made, counsel expressly stated that he was not participating or representing the defendant in this motion.

[2] Rule 32(c)(1) provides:

> (1) When Made. The probation service of the court shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation unless the court otherwise directs. The report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or has been found guilty.

PPI—8S—3-17-72—30M—9153

After a jury trial, over which the undersigned presided, defendant Lucchetti was found guilty of conspiracy and bank robbery. 18 U.S.C. §§371; 2113(a) and (d). Following his conviction, the court read defendant's presentence report, and, on October 15, 1971, sentenced him to a term of 20 years. Subsequently, however, this court set aside defendant's conviction and ordered a retrial. Memorandum of decision and order dated December 16, 1971. Defendant claims that since the undersigned read his presentence report following his 1971 conviction, the terms of Rule 32(c)(1) require disqualification.

In Gregg v. United States, 394 U.S. 489, 89 S. Ct. 1134 (1969), the Supreme Court ruled that it was error for a judge to view a defendant's presentence report prior to conviction. In reaching this conclusion, the Court sated, in dicta, that "there is no reason" for a judge to see a presentence report prior to conviction. Id. at 492, S.Ct. at 1137. Applying this rule to the present case, recusal would apparently be mandated.

It is clear, however, that in enunciating its view regarding Rule 32, the Court was not considering the circumstances in which a defendant is retried before

the same judge. United States v. Small, 472 F.2d 817, 821 (3d Cir. 1972). In Small, the Court wrote:

> The Supreme Court was obviously not considering the retrial context when it wrote Gregg. Nor was it considering other similar circumstances when a judge may see a presentence report on a defendant before proceeding to try him. Such circumstances would occur if a trial judge accepted a guilty plea on some counts and sentenced the defendant on those counts before proceeding to try other counts to which the defendant had pleaded not guilty, or if the trial judge had presided and sentenced following conviction of defendant on one criminal offense and shortly thereafter was assigned to try the same defendant on other charges. (citations omitted)

Thus, in situations such as the present one, there is a legitimate reason for a judge to read the presentence report prior to trial, and the broad prohibition set forth in Gregg is not applicable.

Furthermore, to reflexively apply the Gregg rule in this case, without considering the underlying circumstances, would frustrate the purpose of the Criminal Rules. In Fallen v. United States, 378 U.S. 139, 142, 84 S.Ct. 1689, 1691 (1964), the Court stated that:

> "the Rules are not, and were not intended to be, a rigid code to have an inflexible meaning irrespective of the circumstances. Rule 2 begins with the admonition that "[t]hese rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay."

In the present case, it is obvious that administrative convenience, simplicity of procedure and prevention of delay are all served by having a single judge preside over all the court appearances of a defendant, and Rule 2 of the General Rules of this district (individual assignment of cases) is designed to achieve just this end.

For these reasons, the court does not feel bound to follow the Gregg dicta in the present case. Accordingly, defendant's motion is denied and it is

SO ORDERED.

U. S. D. J.

PPI - 888 3-17-72 - 30M - 9153

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ APR 18 1975 ★
TIME A.M.
P.M.

UNITED STATES OF AMERICA
RESPONDENT

V.

CHARLES LUCCHETTI
DEFENDANT

71 Cr. 668 ; 75 Cr. 25
No. 71 Cr. 849

File

NOTICE OF MOTION

TO THE HONORABLE CHIEF JUSTICE JACOB MISHLER, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF BROOKLYN, NEW YORK.

Come's now, Charles Lucchetti, according, to law, under oath, doth depose and say:

May it please the Court:

Please take notice, that upon the Indictment and/or all proceedings herein/thereof including the annexed motions, affidavits, actions and/or memorandam of Law/Laws derivative thereof, Defendant Charles Lucchetti proceeding Pro-Se in Forma Pauperis, will move this Honorable and Esteemed Court before the Honorable Jacob Mishler, Chief Justice of the United States District Court for the Eastern District of Brooklyn, New York, on the ____ Day of April, 1975, at 10: O'Clock in the forenoon of that day, or as soon thereafter as Defendant Charles Lucchetti, may be heard:

(1) For an order pursuant to Rule 16 (a) of the Federal Rules of Criminal Procedure whereby causing/compelling the prosecution to furnish the Defendant in the instant case, Charles Lucchetti, (all) Statements written/recorded made by said Defendant to angency/agent of the Federal Government/State/States and/or satellite agency therein/thereof which are in possession and/or to be in the possession/control of the prosecution/Government and/or satellite agent/agency therein/thereof.

A 209

(36) Cond't

The Statements any/all made via Co-Defendants/Co-conspirators written/recorded made via said Co-Defendants/Co-conspirators, and/or as so alledged via the Prosecution/Government and/or any satellite agent/agency therein/thereof, the existence of which is known and/or by the exercise of due diligence may become known including, but not limitted to any/all evidence/testimony, witness/witnesses presented to a grand/petit Jury of His Peer's and/or Grand Jury of His Peer's that has/did/will be knowledgeable/informed of evidence/witness/witnesses and/or any testimony as abovestated, But not limitted thereto.

(2) For an order pursuant to Rule's 16 (A-2) & 16 (B) of the Federal Rule's of Criminal Procedure granting Defendant Charles Lucchetti due process of Law in that said defendant be afforded: Opportunity to (a) inspect copy and photograph and/or record holographically/electronically any/all material/evidence in possession and/or having been in possession of the prosecution/government and/or satellite agent/agency therein/thereof.

(3) That, this Honorable and Esteemed Court cause to issue an order compeling the Prosecution to produce all/any prior/present and/or outstanding convictions and/or pending Indictments/charges reguardless of origin past, present or pending against persons/agents/groups/Corp./person/people whom the Prosecution, could/would/will use as witness/witnesses and or producers of evidence against the Defendant, Charles Lucchetti.

(4) That, this Honorable and Esteemed Court cause to issue an order compeling the prosecution to present/disclose the substance of any oral agreements/contracts of any monetary gain in any form past/present/future, to any witness/witnesses in return for their testifying/testimony, in the above captioned action concerning Charles Lucchetti Defendant therein.

(5) That, this Honorable and Esteemed Court cause to issue an order compeling the prosecution to disclose any/all evidence and/or witness/witnesses as herein and/or above discribed which the Government does not intend to use in the trial of the instant case at bar.

Cond't

(6) Further that, all statements made by witnesses as discribed above e.g., No. (5) above, be produced and submitted to the defendant Charles Lucchetti, whereby any/all Constitutional safeguards/rights be preserved at all times, but not limitted thereto.

(7(Further that this Honorable and esteemed Court cause to issue: an order compeling the Prosecution/Government to produce/disclose to the Defendant in the instant case the names of all/any witness/witnesses and/or oral contracts agreements/words, recordings/any/all matter which the Prosecution/Government and/or satillite agency thereof/therein which Government/prosecution does not intend to use, and/or might/will/could/will not use.

(8) Further that, this Honorable and Esteemed Court cause to issue: an order compeling the Prosecution/Government to Produce/disclose to the Defendant in the instant case: e.g., All/Any evidence relevant to the Guilt and/or innocence of the Defendant Charles Lucchetti.

(9) Further that this Honorable and Esteemed Court Cause to issue and Order that the Prosecution/Government fully disclose the existance of any/all memorandum(s)/notes/words/comunication(s), obtained, compiled, recorded, electronic survailance/photographic survailance, video,movie survailance conducted against any witness/witnesses Co-conspirator/Co-conspirator(s) and/or Co-Defendant/Co- Defendants having been in possesion, in possesion, to be in possesion of the State/State/ Government Agents/Agencys, or any satillite Agent/ Agency therein/thereof, thereafter to be presented to the Defendant herein Charles Lucchetti.

(10) Further that this Honorable and Esteemed Court cause to issue: an order compeling the Prosecution/Government to disclose to the Defendant Charles Lucchetti herein for inspection all/any order/orders supporting papers therein contained providing for legal/lawful/Constitutional eavesdropping electronically and/or photographicly and/or of any type possible used via the Prosecution Government and/or any satillite agent/agency thereof therein.

Further that this Honorable and Esteemed Court cause to issue: an order compeling the Prosecution/Government to disclose/produce for extensive inspection and copy: any/all conversations/statements/words overheard by the Government/

Cond't

State/States, agent/agents/agencys or any Satilitte agent/agency therein/ thereof, but not limitted thereto, e.g., any type survailance conducted in any form what so ever via the above stated agencys.

(11) Further that this Honorable and Esteemed Court cause to issue an order: that the Prosecution/Government pursuant to Rule 7 (f) of the Federal Rules of Criminal Procedure an order requiring the said prosecution/Government to serve/file a bill of particulars setting forth the following:

AS TO ALL/EACH COUNT OF T
INDICTMENTS 71 Cr. 662-71Cr. 849
AND INDICTMENT 75 Cr. 25.
AND

(1) State the date on which the defendant Charles Luchetti allegedly entered the alleged conspiracy.

(2) State the manner and name by which it will be called that the defendant Charles Lucchetti entered the alledged conspiracy.

(3) State the manner in which the defendant Charles Lucchetti and/or it will be claimed said defendant conspired to conceal the existence of the conspiracy.

(4): State the speciffic place of abode/apartment/room/hotel/motel/resterant/bar/ club/town/city/street/day/date/hour/month/year alledged conspiracy took place and exact persons alledged to have partook in same, but not limitted thereto, e.g., extending order for the proving that same was persuant to the Constitution of the United States, and/or all laws and/or provisions provided for such case.

(5) State the manner in which the Defendant Charles Lucchetti and/or it will be claimed that said defendant took steps to prevent the disclosure of his alledged illegal activities.

(f)

AS TO OVERT ACT (1)

(1) State the specific Year/Day/month/hour/moments that the Dfeendant Charles Lucchetti allegededly met with co-conspirators/conspirator and/or any person or person(s).

Cond't

(2) State the "Exact" location where said conspirators met, If in a building, the "Exact" address ; if in a car/van/truck the make model and Reg. No.

(3) For an order dismissing this indictment herein pertained to with prejudice on the part of the Prosecution/Government wherein it was founded unconstitutionally in that it was selected from the voter registration list wherein the names of poor, unlearned, non-affluents, spanish, Negro's of poor back rounds are systamaticly purposley excluded, and in addition the prosecution and/or Government is aware that it can not be proven that in the slightest fashion said Jury System is valid/Constitutional, in addition thereto said Master as well as Pitit Jury Wheels in addition to the above stated was/is void of the proper amount of 18-19-20 year olds, infact the plan used to impanal the grand/pitit Jurries is void/invalid unconstitutional in this Circuit.

May it please the Court:

For the above stated reasons, and, such other relief as this Honorable and Esteemed Court may deem proper/Just, Charles Lucchetti will ever pray that this said Court will grant the relief in each/all respects.

SWORN AND SCRIBED TO BEFORE ME THIS DAY OF APRIL_____, 1975.

_____*

WITNESS.

RESPECTFULLY CONSTITUTIONALLY SUBMITTED

Chas. Lucchetti

CHARLES LUCCHETTI
PRO-SE

4/18/75

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ APR 18 1975 ★
TIME A.M.
P.M.

UNITED STATES OF AMERICA
RESPONDENT

V.

CR. No. 849 - 71

CHARLES LUCCHETTI
DEFENDANT.

NOTICE OF MOTION

MOTION TO DISMISS

PERSUANT TO THE PROVISIONS OF THE SECOND CIRCUIT COURT OF THE EASTERN DISTRICT OF NEW YORK, AND, 6 e FEDERAL RULES OF CRIMINAL PROCEDURE, E.G., SEE: C.F.L. HALL, ET-AL MORDEN CONSTITUTIONAL LAW, VOL. 1, ROCHESTER, 1969:

> "TO MAKE PUBLIC ANY PART OF" THE RECORD, E.G., THE GRAND JURY PROCEEDINGS WOULD INEVITABLY DETRACT FROM ITS EFFICACY" (PITTSBURGH PLATE GLASS CO. V. U.S., 360 U.S. 395). THE COURT HAS RECOGNIZED THE LONG ESTABLISHED POLICY THAT MAINTAINS THE SECRECY OF GRAND JURY PROCEEDINGS IN FEDERAL COURTS SEE: (DENNIS V. U.S. 384, U.S. 855)" BUT NOT LIMITTED THERETO. E.G., PROVISIONS IN SUCH CASE MADE & PROVIDED FOR, AND, FEDERAL RULES CRIMINAL PROCEEDURE.

TO THE HONORABLE, JACOB MISHLER, U.S.D.J., UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF BROOKLYN NEW YORK.

Come's now, Charles Lucchetti, Defendant in the above entitled cause, and, after being duly sworn, according to law, deposes and says:

May it please the Court;

Cond't

(35)

The defendant Charles Lucchetti herein sets forth the following:

That, during the "Trial e.g., 71 Cr. No. 71 Cr. 849 it was assertained that one, Jack Dempsey a Co-Defendant in said 71 Cr. 849 cooperated with the Government.

Said Defendant Jack Dempsey, testifide before the Grand Jury which handed down Indictment No. 71 Cr. 849:

It has been further assertained that, "IN FACT" Jack Dempsey was "unlawfully" in "Gestapo Like Fashion" furnished with secret Grand Jury testimony that had been submitted to the said Grand Jury (Via) David Williams the third 3rd Defendant in the above stated 71-Cr. 849 prior to, Dempsey testifying before the Grand Jury as witness for the Government in the instant case which handed down Indictment 71 Cr. 849, all of which is and, known to this Honorable Court in contrivention of Due Process of law and, the Constitution of these United States of America, among other(s).

"ADDITIONAL MOTION INJECTED"

Charles Lucchetti the Defendant herein and as before stated e.g., prior motion abovestated in addition to same represents the following under oath, according to Law:

(1) Charles Lucchetti Defendant herein after investigating discovered that "IN FACT" prior to and during the trial of the Defendant herein the Government/prosecution knowingly and willfully withheld material Statements made via its Chief Witnesses on may 13, 1971 and knowingly misrepresented to the Trial and appellate Courts that such Statements had not been made.

(2) That, IN FACT" the Government with malics of forthought failed to produce all prior statements of its Chief Witnesses, as ordered via the Trial Judge, said denial resulted in the denial of defendant Lucchetti's right to Due Process of Law, as required by the Constitution of the United States, the laws thereof, and among others.

SWORN & SCRIBED TO BEFORE ME

THIS ___ DAY OF APRIL, 1975

RESPECTFULLY CONSTITUTIONALLY SUBMITTED

Charles Lucchetti 4/18/75

CHARLES LUCCHETTI

WITNESS

Received 4/28/75

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
APR 29 1975
TIME A.M.
P.M.

April 24, 1975

Re: Osvaldo Fuentes
71 A 949
USCA 25

Mr. Paul Wolkenstein
Legal Aid Society
Eastern District of New York
Brooklyn, New York 11201

Dear Paul Wolkenstein:

Enclosed you will find a copy of the letter and order appointing you appellate counsel in the above-captioned matter.

1) Pursuant to the order you are co-counsel to the court-appointed attorney that was assigned on June 8, 1972, William Lashley
16 Court St.
Brooklyn, New York
11201

2) You will please note that the appellate record has been made up and transmitted to the Court of Appeals.

You will please forward to the Clerk of the Court of Appeals a copy (s) of the transcripts of the proceedings.

Docket entries
3/2/73 — Mr. Wolkenstein
1/3/73 — Mr. Leo Resnick
1/4/73 — Mr. Lee
1/9/73 — Mr. Lee
1/15/73 — Mr. Deegan

2nd appeal

A 216

3/12/25 —— W. Cox
4/3/25 —— Wm Lawrence
4/11/25 —— Wm Delaney
4/18/25 —— Wm Cardiff & Barbera

It necessit that the proceedings with the above mentioned transcripts as soon as possible so that I will be able to prepare supplementary petitions and file them upon the suppression hearing now scheduled for the 2nd of May, 1925.

3) That the court enlarge the date of the status of the supplementary petitions pro-tem matters now with the court on April 18th, 1925 pro se.

4) That the court accept the United States Supreme Court decisions as authority cases;

#21 CR 849
#25 CR 25;

that the accused all matters of evidence appeared in that the records with copy.

5) That subpoenas or orders pursuant to the criminal rules of practice be issued at the request of an investigator.

A 217

To request that the case is set

I am now prepared to continue
as counsel for defendant Wm. Allen
Lesley in preparation, submission,
and trial of my federal crimi-
al proceedings before this court.

I beg leave to state that Wm.
Allen Lesley is presently engaged in
another criminal trial before this
honorable court and therefore cannot
be expected to be prepared to repre-
sent me on April 19, at which time
the court anticipates that the criminal
trial in which Wm. Allen Lesley was
previously committed to give multi-ob-
jective prosecutions to start on April 21st, 19-
73 and possibly continue until May 1st, 19-
73 and not past possible dispose.

I am Wm. Allen Lesley without adequate
time to prepare and study my case which con-
sist of thousands of pages of documents,
orders, briefs which are to be necessary
investigation and performed.

The court is also aware of the fact that
my suppression hearing is scheduled for
April 2nd, 1973.

A 218

Therefore you are respectfully
requested that I be excused in

This matter
I request it remain sealed
4/24/75
J Gleason
Respectfully yours,
Charles Lockhart
Pro se April 24 1975

Re:
United States v. Charles Lockhart
Docket No. 74 CR 849 and 75 CR 25

cc: Joan O'Brien, Esq.
Assistant United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Mr. Allan Taslitz, Esq.
16 Court Street
Brooklyn, New York 11201

Honorable Jacob Mishler
Chief Judge
Eastern District of New York
Brooklyn, New York 11201

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
APR 29 1975
TIME A.M.....
P.M.....

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
BROOKLYN NEW YORK

CHARLES LUCCHETTI
PETITIONER

V.

INDICTMENT(S) 71 Cr. 849
&
75 Cr. 25

UNITED STATES OF AMERICA
RESPONDENT

" NOTICE OF APPEAL"

MAY IT PLEASE THE COURT:

Notice is hereby given that, Charles Lucchetti, Your Petitioner herein petitioning in Pro-Se hereby appeals to the United States Court of Appeals for the Second Circuit, from the order and Judgement rendered made and entered herein on the 17, day of April, 1975, by the Honorable Jacob Mishler, United States District Judge, denying Petitioners Motion to disqualify Himself from adjudicating the abovestated Criminal Indictment(s), and/or the Trial(s) pertaining to same.

RESPECTFULLY SUBMITTED

Chas. Lucchetti

CHARLES LUCCHETTI PRO-SE

APRIL 24, 1975

A 220

APPLICATION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS
AND FOR ASSIGNMENT OF COUN-
SEL WITH AFFIDAVIT OF POVERTY

BEFORE ME, the undersigned authority Charles Lucchetti,
who, after being duly sworn, according to law, on oath deposes and says:

1) That he is a citizen of the United States, and of legal age; and

2) That because of his poverty he is unable to pay the costs of the instant cause of action, or for retaining of counsel, or to give security for the same; and

3) That he is a pauper within the meaning of the law (ADKINS v DUPONT, 335 U.S. 331); and

4) That he seeks redress in good faith to obtain the relief to which he verily believes he is entitled.

WHEREFORE, it is respectfully requested that this Court grant leave to proceed herein in forma pauperis and grant assignment of counsel, for otherwise an injustice shall occur and affiant will be foreclosed relief by reason of his inability to pay the costs thereof.

STATE OF NEW YORK)
) ss
COUNTY OF NEW YORK)

/s/ Charles Lucchetti
Affiant

SWORN TO AND SUBSCRIBED, BEFORE ME THIS 24 DAY OF April, 1975.

J. J. Norton
NOTARY PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the within Motion, placed in a sealed envelope, was mailed through the United States Mails, at the U.S. Federal Detention Headquarters, 427 West Street, New York, New York, to each of the following:

ONE COPY (1):

United States Attorney
Eastern District of New York

ONE ORIGINAL & TWO COPIES:

Clerk of the Court
Eastern District of New York

DATED: 24 - SIGNED: Charles Lucchetti
pro se

AFFIDAVIT OF MAILING

STATE OF NEWYORK)
) ss
COUNTY OF NEW YORK)

_____, being duly sworn, deposes and says that on the below indicated date he duly handed to the undersigned U.S. Parole Officer or his direct designate (a)(an) _____, of which the within is a true copy, for mailing same, postage prepaid, to the following:

ONE COPY (1):

United States Attorney
Eastern District of New York

ONE ORIGINAL & TWO COPIES:

Clerk of the Court
Eastern District of New York

Charles Lucchetti
Affiant

SWORN TO BEFORE ME THIS DAY ___ OF _____, 1975.

NOTARY PUBLIC Morton

Received 4/30/75

Honorable Jacob Wisikler
Chief Judge
Eastern District Court
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
APR 30 1975
TIME A.M.
P.M.

re: U.S.A. -v.- Charles Fiacchetti
71-CR-849 & 75-CR-25

Dear Judge Wisikler,

I am asking your honor to accept this letter as a formal motion, and as a supplement to my motions and applications previously submitted in reference to the following cases (71-CR-849, 75-CR-25).

1) I renew my previous application that your honor disqualify himself and recuse my cases before another judge for the following reasons:

a) bias and prejudice

b) that the court has received my pre-sentence report

c) has your honor not to disqualify himself would be in the interest of

The choice of having a trial by judge against a trial by jury.

As contained in the records the court has already denied me the presumption of innocence and has judged me guilty.

2) Wether or not the court dismiss indictment number 71-CR-849 for the following reasons:

a) The petitioner was denied a fair trial in August of 1971, at which time the petitioner had witnesses in petitioner now states that the witnesses for the defense in August of 1971 are no longer available; as are not willing to testify on his behalf.

b) Petitioner was denied a fair and speedy trial in August of 1971 and was denied constitutional rights.

c) For the petitioner to be tried now would place him in double jeopardy for the alleged same crimes.

d) To try the petitioner now for the crimes charged in the indictment would constitute discriminatory enforcement.

c) The government suppressed Brady material of exculpatory nature and thirty-five hundred (3500) material at the original trial and the government misled this court and United States Court of Appeals for the Second Circuit in the above issues.

D) petitioner states that from the date of the trial August 2, 1971, until the date ordered for the new trial being Jan. 20, 1975, this years and seven months past and four years and one month since the date of the crime that it would be impossible for the petitioner now to receive a fair trial. The reasons: the loss of witnesses, the dulling of memories.

All the above reasons (as stated above) the motion to dismiss indictment 71-CR-849 should be granted, or for any other reason this honorable court deems proper and just.

3) Motion for the court to dismiss indictment number 75-CR-25 for the following reasons:

a) That the government violated rule 48 b of the Federal Rules of Procedure ... unreasonable delay.

Ved denial of a fast and speedy trial.
De crimes charged in indictment 75-CR-25
were allegedly committed on March 9, 1970,
March 20, 1970 and April 20, 1970.
De government alleged on a pre-sentence
report ordered by de court in August of 1971
and completed in October of 1971 dat de
petitioners are guilty of de crimes charged
in indictment 75-CR-25. On October 1972
de government put evidence before a grand
jury of de petitioners involvement, but
still did not indict.

De government indicted de petitioners on
Jan. 9, 1975, four years and ten months
from de date of de alleged crimes were
committed.
Three years and three months from
de date of de pre-sentence report.
Two years and two months from
de date de government submitted de
case to de grand jury.

Petitioner states dat all de delay in
bringing his cause to indictment was uncon-
stitutional and prohibition of de petitioner
was constitutional rights.

6) Petitioner states that the crimes charged in the indictment 75-CR-25 are over five (5) years old were four (4) years old and ten (10) months when the indictment was handed down, making it now totally impossible to adequately prepare and submit a proper defense.

Wherefore the above reasons (as stated above) for the motion to dismiss indictment 75-CR-25 should be granted, and for any other reason this Honorable court deems just and proper.

4) This Honorable court issuing an order directing the government to furnish the petitioner with a copy of all evidence and testimonies submitted to the October 19th, 1972 and Jan 9th, 1975 grand juries in the instant matter 75-CR-25; and including all statements made to said grand juries by the assistant United States Attorneys.

So that the petitioner can prepare further motions to be submitted to the court.

5) This Honorable court issuing an order directing the government to furnish the petitioner with a copy of all evidence and testimonies

submitted to the June 15th, 1971 and July 20, 1971 grand juries in the instant matter (71-CR-662) June 15th, 1971 and (superseding 71-CR-849) July 20th, 1971; and excluding all statements made to said grand juries by the assistant United States Attorneys.

So that the petitioner can prepare further motions to be submitted to the court.

6) This honorable court issuing an order directing the government to furnish the petitioner with the jurisdictional statutes that if the claims, that employees of the First National Bank of Bayshore, 340 Powell's Road, Bayshore, L.I., New York, on Dec. 21st, 1970 constitutes a federal offense.

May it please the court;

For the above stated reasons, and such other relief as this honorable and esteemed court may deem just and proper, Charles Lucchetti will ever pray that this said court will grant the relief in each and all respects.

Respectfully submitted,
Charles Lucchetti
Charles Lucchetti
Pro Se April 29, 1975

Dated April 29th, 1975

A 228

VII

re: United States v. Charles Lucchese
Docket Nos. 71-CR-662, 71-CR-849 (superseding indictment) and 75-CR-25.

c.c Clerk of the Court
Eastern District
225 Cadman Plaza East
Brooklyn, N.Y. 11201

Joan O'Keefe, Esquire
Assistant United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, N.Y. 11201

Mr. Allen Lashley, Esquire
16 Court St.
Brooklyn, N.Y. 11201

Honorable Lucas Miskin
Chief Judge
Eastern District of New York
Brooklyn, N.Y. 11201

:chetti
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7 WEST STREET
YORK, N. Y. 10014

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HON. JACOB MISHLER
C'IEF JUDGE
U.S. COURT HOUSE
EASTERN DISTRICT OF NEW YORK
BROOKLYN, NEW YORK 11201

A 230

UNITED STATES DISTRICT COURT
DISTRICT OF NEW YORK
EASTERN DISTRICT OF NEW YORK

---------- X

UNITED STATES OF AMERICA

-V-

CRIMINAL NOS. 74CR849
75CR25
75CR288

CHARLES LUCCHETTI

---------- X

"MOTION FOR A DIRECTED VERDICT"

AND/OR

"DISMISSAL OF INDICTMENT"

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
MAY 5 1975
TIME A.M.
P.M.

TO THE HONORABLE JACHOB MISHLER, UNITED STATES DISTRICT JUDGE, U.S.D.C., FOR THE DISTRICT OF NEW YORK, EASTERN DISTRICT OF NEW YORK, N.Y.C., N.Y.

Comes now, Charles Lucchetti Defendant in the above stated action/cause, after being duly sworn, according to law, deposes and says:

Defendant herein moves for the dismissal of the indictment upon the ground that the Goverment has failed to establish Prima Facie Jurisdiction and therefore this court lacks authority to proceed further against defendant pursuant to 18,U.S.C. Sec. 2113 A thru F.

"FACTS"

Your Movant will rely on the following facts: "Title 28, U.S.C. Sec. 1349"

"The District Court shall not have Jurisdiction of any civil action by or against any corporation upon the grounds that it was incorporated by or under an Act of Congress, unless the United States is the owner of more than one-half (½) of its Capitol stock.

1. Cond't

The Federal Deposit Insurance Corporation was created as a corporation by a congressional Act in 1933 and went into effect on January 1, 1934.

In 1950 it was withdrawn as a part of the Federal Reserve Act and made a seperate Law known as the Federal Deposit Insurance Act.

The purpose of the original F.D.I.C. Act was to promote soundness in Banking and to aid the U.S. Government in discharge of its fiscal transactions.

"Quoting" from the U.S. Government orginization manual 1970/1971: "The Corporation was established to promote and preserve Public confidence in Banks and to protect the money supply through provisions of insurance coverage for deposits".

The Corporation (F.D.I.C.) initial capital was supplied in the form of non-voting stock. $150 Million Dollars from the United States Treasury, $139 Million Dollars by the Federal Reserve Bank.

The Legislative history of "Title 18 U.S.C. Section 2113 A Thru F. dates back to 1934 and this Section 2113, A thru F was enacted by Congress to protect the United States Governments investment in F.D.I.C..

The Necessary elements and constitutional requirements were present to establish or enact a valid Federal Statute, i.e., "Title 18 A Thru F., and thus create a valid cause for Federal Jurisdiction in the matter of Bank Robbery where said Bank deposits were insured by F.D.I.C. The Necessary eliments for establishing Federal Jurisdiction is ownership, proprietorship or proprierutability. In the case at hand this being accomplished by the virtue of the Government to the F.D.I.C..

Up to this point the Congress had a valid Constitutional reason to enact and enforce the Criminal Statute, Title 18 U.S.C. Supra, and to protect the United States Governments investment and to allow the Government to sue for and defend the F.D.I.C. in Criminal Matters. However today and for the past several years, the United States Government has not had and financial interest in F.D.I.C.

"ADDITIONAL RELEVANT FACTS"

Cond't

"In 1947-1948 the F.D.I.C. retired the capital stock owed by the United States Government".

"In 1950-1951 the F.D.I.C. paid back a current interest rates to the United States Government, on the initial loan, the amount of $81 Million Dollars".

From this point the United States Government has lost its legal and constitutional right to prosecute on charges under "Title 18 U.S.C. Sec. 2113 A. thru F.

From a legal or Government Standpoint there is no difference today between a member Bank of F.D.I.C. and a non member. The Government is not involved with either to the extent that the necessary elements are not present to validate the reason or cause for federal Statute intervention and/cr Jurisdiction... The Government does not, have ownership, proprietorship or proprietorbility in the F.D.I.C.. This brings us back to "Title 28 U.S.C. Section 1349" as stated in the outset of this motion.

There is no difference in establishing Federal Jurisdiction whether it be Civil or Criminal. There must be a valid cause for Government intervention whether to sue or defend in civil matters or to prosecute in criminal matters.

Your Defendant-Movant contends that the Government has no standing as an interseted or involved party in the F.D.I.C. or to prosecute him under "Title18 U.S.C. Supra or to hold him in a Federal Prison.

The wording in the F.D.I.C. that is used, implies that it is a Government agency and that by violation of "Title 18 U.S.C. Supra, one has committed a crime against the Government... Such could not be further from the truth.

(A) The Government does not contribute any funds to the F.D.I.C. "FACT": F. D.I.C. admits this.

(B) The Government does not recieve any of F.D.I.C. earnings. So the specification of details of the offense charged two counts of this indictment found in the instant case against your Defendant-Movant cannot be used/tailord to violate a statute of congressianal Act that is contrary to the "That violates due process of law".

The implication of "Title 18 U.S.C. Section 2113 in charging that robbery of the Banks as defined in indictments 71CR849 and 75CR25 and 75CR288, The deposits of which were then and there insured by the Federal Deposit Insurance Corporation is misleading in that it implies that the F.D.I.C. insures Banks and/or Bank against specific loses i.e., bad banking practice or from financial irregularties.

Private insurance companies insure the banks against robbery, thief, fire, flood etc.

Wherefore your movant moves the Court to subponea the F.D.I.C.'S leading representative in this area or his agent and, any relevant records/papers not otherwise available/public used by the F.D.I.C. in respect to specifically what the F.D.I.C. does insure banks against and to ascertain if the United States Government has any ownership, propietorship or proprietutability in the instant case. The Indictment to which defendant-movant is held to answer to alledges that the deposits of the said Banks Supra were "then insured by the F.D.I.C." From which jurisdiction appears to derive, making this said charge an offense against the United States under "Title 18U.S.C. Sections A thru F"., such a factual showing could anly be established by documentary proof in the form of the "Orginization Certificate" showing said Banks to be insured by F.D.I.C. as alledged in defendant-movants indictment, e.g., against robbery. As the orginazation Certificate goes to the factual basis of whether the offense in question was in the nature of a federal violation, thus, also being as issue of a jurisdictional nature.

Furthermore, in this instant case, defendant-movant respectfully submits that there is another serious lack of factual basis involved which challenges this courts jurisdiction going into the Bank robbery charge itself.

The indictment which defendant-movant is held to answer aledges that the deposits of these said Banks Supra were "then insured by F.D.I.C." the term "Bank" as applied in 2113 (a) is defined in sub-section (f) of 2113, to include/means any member bank of the Federal Reserve System, and any Bank, Banking association, trust company, savings bank, or other banking institution organization/organozed or operating under the laws of the United States, and

Cond't

any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

Again, the indictments in Defendant-movants case "F.D.I.C." is the definition from which Jurisdiction appears to derive, making the charges therein an offense against the United States, thus, an escential element of an offense under 2113 (f) ... KING -V- UNITED STATES, 426 F. 2d 278 (1970).

Since the applicability of 2113 (a) depends upon sub section (f) to show a Federal violation of a statute, without such a showing this court lacked Jurisdiction to accept defendant-movants plea.

Premises considered and upon this Courts perusal of the said organization Certificate and, all other relevant/material documents and, upon hearing all the testimony of necessary witnesses this court can determain whether the Court has Jurisdiction to proceed with any further action in defendant-movants case.

"CONCLUSION"

Wherefore, Defendant-Movant prays that this Honorable and Esteemed Court issue an order for the production of all necessary documents, papers, or whatever, including witnesses necessary to bestow/grant/give the Government Jurisdiction of this matter...

And, if the Government cannot prove/show competent Jurisdiction the Defendant-Movant moves this said Court to enter an order directing a verdict of aquittal and/or in the alternative these indictments be quashed.

State OF NEW YORK)
(SS/
COUNTY OF NEW YORK)

RESPECTFULLY CONSTITUTIONALLY SUBMITTED

Charles Lucchetti

CHARLES LUCCHETTI
PRO-SE 427 WEST STREET
NEW YORK CITY, NEW YORK

Before Me the undersigned, personally appeared, Charles Lucchetti, Defendant-movant-Affiant herein, first being duly sworn, according to law, under oath, deposes and says:

That all of the allegations/statements contained in this motion for a Directed Verdict and/or dismissal of indictment are true to the best of his knowledge, information and belief.

Charles Lucchetti

CHARLES LUCCHETTI-AFFIANT

Cond't

All of the alligations/statements etc. on page's (1) one thru (6) six of the motion herein and/or as beforé stated.

"AUTHORIZED BY THE ACT OF JULY 7, 1955 [illegible] (28 U.S.C. 4004)".

SWORN AND SCRIBED TO BEFORE ME

THIS 9th DAY OF April, 1975

RESPECTFULLY CONSTITUTIONALLY SUBMITTED

Charles Lucchetti

CHARLES LUCCHETTI
PRO-SE

John J. Norton *

WITNESS

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the within motion, placed in a sealed envelope, was mailed through the United States Mails, at the U.S. Federal Dention Headquarters, 427 West St. , New York, New York, to each of the following:

ONE ORIGNAL & THREE COPIES:

CLERK OF THE COURT
EASTERN DISTRICT OF NEW YORK
225 Cadman Plaza
Brooklyn, N.Y.

ONE COPY

UNITED STATES ATTORNEY
EASTERN DISTRICE OF NEW YORK
225 Cadman Plaza
Brooklyn, N.Y.

DATED, April 30, 1975

SIGNED Charles Lucchetti
CHARLES LUCCHETTI, PRO SE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW YORK
EASTERN DISTRICT OF NEW YORK

---------- X

UNITED STATES OF AMERICA

-V-

CRIMINAL NOS. 71CR849
75CR25
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(SS/
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RESPECTFULLY CONSTITUTIONALLY SUBMITTED

Charles Lucchetti

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NEW YORK CITY, NEW YORK

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Charles Lucchetti

CHARLES LUCCHETTI-AFFIANT

Cond't

All of the alligations/statements etc. on page's (1) one thru (6) six of the motion herein and/or as beforé stated.

SWORN AND SCRIBED TO BEFORE ME

THIS 30 DAY OF ~~MAY~~ April, 1975

RESPECTFULLY CONSTITUTIONALLY SUBMITTED

Charles Lucchetti

CHARLES LUCCHETTI
PRO-SE

JULY 7, 1955
U.S.C. 4004)",

John J. Norton

WITNESS

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the within motion, placed in a sealed envelope, was mailed through the United States Mails, at the U.S. Federal Dention Headquarters, 427 West St. , New York, New York, to each of the following:

ONE ORIGNAL & THREE COPIES:

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285 Cadman Pla za
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UNITED STATES ATTORNEY
EASTERN DISTRICE OF NEW YORK
225 Cadman Plaza
Brooklyn, N.Y.

DATED, April 30, 1975

SIGNED Charles Lucchetti
CHARLES LUCCHETTI, PRO SE

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ MAY 13 1975 ★
TIME A.M.
P.M.

M'FILMED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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71 CR 849
(75 CR 25)

UNITED STATES OF AMERICA

-against-

CHARLES LUCCHETTI,

Defendant.

- - - - - - - - - - - - - - - - - -

Memorandum of Decision
and Order

May 12, 1975

MISHLER, CH. J.

Defendant Lucchetti moves to suppress statements made by him to F.B.I. agents and testimony given by him before the grand jury on October 19, 1972.[1] The court makes the following findings of fact upon the evidence adduced at a hearing:

Lucchetti was convicted on August 5, 1971, after a jury trial, on charges of armed bank robbery (18 U.S.C. §2113(d)) and conspiracy (18 U.S.C. §371). On August 10, 1971, he wrote to Special Agent Dan Long of the F.B.I.[2] On September 1, 1971, Agent Long was at the Federal House of Detention at West Street in New York City with Special Agent Arthur Achenbach; they paid Lucchetti a visit in response to the letter. Long submitted a "Waiver of Rights"

FPI-889-3-17-72-30M-9153

form which incorporates the Miranda warnings (Miranda v. Arizona, 384 U.S. 436, 85 S.Ct. 1602 (1966). Lucchetti returned it to Long unsigned.

On October 15, 1971, Lucchetti was sentenced to a term of 20 years and a fine of $10,000 on the armed robbery count (Count 1) and 5 years and a fine of $5,000 on the conspiracy count (Count 3),[3] the said terms to run concurrently, the fines to be cumulative in the total sum of $15,000. During the trial, Lucchetti had briefly dismissed Kenneth Rohl, retained counsel, because of a claimed conflict of interest resulting from Rohl's representation of Jack Dempsey, the government's main witness (Trial Tr. p. 99 to 124). Rohl was immediately engaged again and represented Lucchetti to the completion of the trial and at sentencing.[4] On March 20, 1972, while the appeal from the judgment of conviction was pending before the Second Circuit Court of Appeals, Lucchetti wrote Achenbach complaining about conditions in the Suffolk County Jail,[5] and requesting that he be interviewed by Achenbach. Long and Achenbach responded by visiting the Suffolk County Jail on March 27, 1972. The civil rights claim was used by Lucchetti as a pretext for gaining the attention of federal

FPI 694 3-17-72 30M 9153

authorities, and for the dual purpose of protecting himself from predictable verbal and physical assaults of fellow inmates and of lending an air of importance to the visit. Lucchetti hinted to the agents that he was in possession of information concerning an armed robbery of the Franklin National Bank which was under investigation by Long. However, Lucchetti refused to disclose any specific information concerning bank robberies or other crimes. Little was accomplished, except to set the pattern for interview requests later to be made by Lucchetti, i.e., Lucchetti's letters complaining of civil rights violations committed by his jailers at the Suffolk County Jail.

A letter dated May 31, 1972, addressed to Achenbach (the salutation read "Dear Artie"), brought Long and Achenbach to the Suffolk County Jail on June 5, 1972. Lucchetti talked about an attorney who had not complied with his instructions, and then introduced the subject of bank robberies into the discussion. Before getting any information, Long reminded Lucchetti that his appeal was still pending before the Second Circuit Court of Appeals and gave Lucchetti the Miranda warnings. Lucchetti advised Long and Achenbach that he was representing himself and

did not need an attorney; he also advised Long and Achenbach that he understood his rights. He stated that Rohl was no longer acting for him. The rest of the conversation concerned matters irrelevant to the instant motion.

Long and Achenbach next visited Lucchetti on June 14, 1972, pursuant to Lucchetti's request in his letter of June 8, 1972 (the letter was again couched in terms of a civil rights complaint). Achenbach advised Lucchetti of his constitutional rights and gave him the warnings required under Miranda. Lucchetti advised the special agents that he had valuable information and would exchange it for a reduction in sentence. The agents told Lucchetti that they were without authority to enter into such an agreement and offered to arrange for a meeting with the United States Attorney.

A letter addressed to Achenbach, dated June 20, 1972,[/6] brought Long and Achenbach to the Suffolk County Jail on June 26, 1972, for another interview with Lucchetti. Lucchetti indicated that he wished to cooperate with the government by offering valuable information. The agents advised him that they had made an appointment for him to see Assistant United States Attorney Emanuel Moore on

July 17, 1972. Lucchetti sent Achenbach a letter on June 27, 1972. Long and Achenbach visited Lucchetti on July 17, 1972, and advised him that Moore was unavailable on that day. Lucchetti volunteered that he had valuable information on a homicide, robberies and illegal activities of a Suffolk County police officer and of a prominent Suffolk County attorney.

Lucchetti was produced in this courthouse on July 21, 1972. He was interviewed by Moore in Long's presence. He repeated to Moore what he had previously told Long concerning information in his possession relating to a homicide, robberies, a Suffolk County police officer's illegal activities and the illegal activities of a prominent Suffolk County attorney. Lucchetti querried Moore as to what he would receive in return for this information. Moore responded that if the information were valuable, the extent of Lucchetti's aid would be made known to the sentencing judge (presumably to support an application for reduction of sentence)[17] and to the United States Parole Board.[18] Lucchetti advised Long that he would think it over and that if he decided to cooperate, he would write a letter complaining of a civil rights violation. The

PPI—885—3-17-72—30M—9153

letter was not long in coming. It was dated July 26, 1972, and it brought Long and Achenbach to the Suffolk County Jail on August 3, 1972.

Long and Achenbach met with Lucchetti in the interview room of the jail. Lucchetti announced that he had decided to cooperate. Long asked whether the cooperation related to robberies implicating Lucchetti himself or robberies implicating others. Lucchetti stated that he was ready to talk about the robberies in which he was involved. At that point, Long called Lucchetti's attention to the pendency of his application for certiorari before the Supreme Court.[19] Lucchetti indicated that he had neither the expectation nor the hope that the application would be granted and that he was prepared to proceed. Long then submitted a "Waiver of Rights" form to Lucchetti which Lucchetti signed after acknowledging that he had read and understood the rights and the warnings. When questioned about representation by counsel, Lucchetti repeated his statement that he was representing himself. He advised Long as to his participation in the armed robbery of the First National Bank of Bay Shore at 340 Howells Road, Bay Shore, on March 9, 1970. Having completed the interview

PPI—188—3-17-72—30M—9153

on that robbery, Long asked Lucchetti to read and sign another "Waiver of Rights" form before making any statements as to the March 20, 1970 armed robbery of the Security National Bank at 162 New York Avenue in Halesite. Lucchetti signed another "Waiver of Rights" form before discussing the armed robbery of the same bank on April 20, 1970. He signed still another "Waiver of Rights" form before admitting that he participated in the armed robbery of the First National Bank of Bay Shore on December 21, 1970, upon which the indictment in the above case was based. The instant motion seeks to suppress the admissions Lucchetti made in this interview implicating himself in four armed bank robberies. He implicated Kenneth Rohl at the same time. /10 In subsequent interviews, he also implicated Lawrence Russo, one Carmine Santillo and one Michael Maxey in armed bank robberies.

At no time did either Long, Achenbach, or any other special agent, make a promise or represent to Lucchetti, prior to the time he made the statements to the agents on August 3, 1972, that they would assist him in ameliorating or avoiding punishment for the crimes committed in either the federal or state jurisdictions. The

agents recognized that his statements were fabricated, designed by Lucchetti and Santora to give a semblance of trustworthiness to what Lucchetti had said. Information implicating Michael Joseph Maxey, Russo and Santillo in armed bank robberies was already in the hands of the F.B.I. through one Robert McCabe, an accomplice who was arrested on September 14, 1972. /12

DISCUSSION

The affidavit in support of the application to suppress the statements made to the F.B.I. agents and to the grand jury asserts as the basis for the motion the government's promise:

1) not to use the testimony against Lucchetti; and

2) to advise this writer that Lucchetti had been of assistance to the government and to recommend that his sentence be reduced.

The additional ground urged is that Lucchetti's statements were involuntary as a matter of law since they were made without the advice of his appellate counsel, Henry Boitel. Lucchetti's brief cites Spano v. New York, 360 U.S. 315, 79 S.Ct. 1202 (1959), Massiah v. United States, 377 U.S. 201, 84 S.Ct. 1199 (1964), and McLeod

FPI 883 3-17-72 30M 9153

only promise made by any government official was made by Moore on July 21, 1972.

Lucchetti was produced in this courthouse on October 19, 1972, where he met with Moore and Long. Moore asked whether Lucchetti would appear before the grand jury and testify substantially in accordance with the statements he previously made to Long and Achenbach. Lucchetti agreed to testify and he was brought before the grand jury that day. Moore read and then submitted to Lucchetti a form of "Waiver of Immunity" which incorporates the Miranda warnings. Lucchetti signed the waiver and told Moore he was ready to testify to the armed robberies in which he was implicated. He requested that Rohl not be advised of Lucchetti's grand jury appearance since his life would be in jeopardy if Rohl learned that Lucchetti had testified to his participation in the various crimes. /11

This motion seeks to suppress that grand jury testimony. The information concerning Rohl was of questionable reliability. Lucchetti represented that Matthew Santora would corroborate the information he gave to the federal agents and the testimony he gave to the grand jury concerning Rohl's activities. Santora was interviewed;

v. Ohio, 381 U.S. 356, 85 S.Ct. 1556 (1965) in support of this position.[13]

In both Spano and Massiah, the Court found that unwilling or uninformed defendants had been imposed upon by the government's efforts at extracting evidence from them. The Court in Spano did not reach the Sixth Amendment claim that the accused had been prevented from using the services of his retained lawyer. The Court found " . . . that petitioner's will was overborne by official pressure, fatigue and sympathy falsely aroused after considering all the facts in their post-indictment setting." (360 U.S. at 323, 79 S.Ct. at 1207). The Court in both cases condemned the affirmative action taken by the state and the federal officers to force admissions. In Spano, the Court said, "the undeviating intent of the officers to extract a confession from petitioner is therefore patent. When such an intent is shown, this Court has held that the confession obtained must be examined with the most careful scrutiny, and has reversed a conviction on facts less compelling than these." (360 U.S. at 324, 79 S.Ct. at 1207). The Court in Massiah found no difference between extraction of admissions through physical or mental pressures directly

PPI-685-3-17-72-30M-9153

applied as in Spano and admissions "deliberately elicited" by means of "indirect and surreptitious interrogations" (377 U.S. at 206, 84 S.Ct. at 1202, the latter phrase borrowed from Judge Hays' dissenting opinion in Massiah 307 F.2d 62, 72 (2d Cir. 1962)).

Lucchetti initiated the plan that resulted in his admissions being made available. He invited the agents to the interview to explore the possibilities of relief from his sentence. He attempted to exploit the interest of the state and federal prosecutors by offering them either false or unreliable information relating to violent crimes in which a prominent Suffolk County attorney allegedly participated. He fed the agents bits and morsels of useless information in the expectation of consideration from the state and federal prosecutors.[14] Since he was offering testimony against his lawyer, he felt it necessary to impress upon the federal agents his refusal to be represented by a lawyer in these negotiations. He now claims that his appellate lawyer Henry Boitel represented him in the above matter. The weakness in this position is further underscored by examining the subject matter discussed in the interviews and before the grand jury. If Boitel represented

Lucchetti, that representation was confined to the robbery of the First National Bank of Bay Shore on December 21, 1970, since it was the conviction for that robbery which Lucchetti was appealing; it did not relate to the other crimes in which his admissions implicated him. Lucchetti made a knowing and intelligent waiver of his right to counsel. The government bears a heavy burden in proving that such waiver was effected; in this case, it has sustained that burden. United States v. Drummond, 354 F.2d 132, 148 (2d Cir. 1965); United States v. Cobbs, 481 F.2d 196, 200 (3d Cir. 1973), cert. denied, 414 U.S. 980, 94 S.Ct. 298; Dillon v. United States, 391 F.2d 433 (10th Cir. 1968).

Lucchetti further argues that the admissions should be suppressed because the government failed to perform the conditions of the agreement. No case is cited in support of this argument. Presumably the theory rests on Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495 (1971).[15] Santobello dealt with promises made by the prosecutor in plea bargaining. The Court said:

> " . . . when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled."

(404 U.S. at 262, 92 S.Ct. at 499).

The Court remanded the case to the trial court " . . . to decide whether the circumstances of this case require only that there be specific performance of the agreement on the plea, in which case petitioner should be resentenced by a different judge, or whether, in the view of the state court, the circumstances require granting the relief sought by petitioner, i.e., the opportunity to withdraw his plea of guilty." (404 U.S. at 263, 92 S.Ct. at 499).

Lucchetti himself "failed to carry out his part of the bargain by refusing to disclose the promised information and hence is in no position to invoke the agreement now." United States v. Nathan, 476 F.2d 456, 459 (2d Cir. 1973). Even if the government assumed obligations with reference to Lucchetti's sentence, it was relieved of these obligations when the court vacated the judgment of conviction. No sound reason is suggested for barring the use of statements knowingly and voluntarily made.

The government proved beyond a reasonable doubt that the only promises or representations made to Lucchetti were:

(1) that his cooperation, if valuable, would be made known to the sentencing judge in the event an application for a reduction in sentence were made;

(2) that it would make his cooperation known to the United States Parole Board if the information were valuable;

(3) that Lucchetti's appearance before the grand jury would not be revealed to Kenneth Rohl.

It further proved beyond a reasonable doubt:

(4) that Lucchetti violated the understanding and failed to give information in his possession which would have been of value to the government; and

(5) the government did not violate the terms of its understanding with Lucchetti.

The government proved beyond a reasonable doubt that the statements made to Long and Achenbach on August 3, 1972, and the testimony given before the grand jury on October 19, 1972, were knowingly, intentionally and voluntarily made.

The motion to suppress the statements and testimony is in all respects denied and it is

SO ORDERED.

U. S. D. J.

FOOTNOTES

/1 H. Elliot Wales, Lucchetti's retained counsel, moved to suppress the statements and the testimony. Wales was subsequently relieved, and the court appointed Allen Lashley under the Criminal Justice Act. Lucchetti discharged Lashley during the hearing and insisted on proceeding pro se against the advice of the court. The hearing continued with Lucchetti appearing pro se, and with Lashley assisting Lucchetti when requested.

/2 Long was in charge of the investigation of various bank robberies in which Lucchetti was a suspect, including the one for which Lucchetti was convicted, i.e., the robbery on December 21, 1970, of the First National Bank of Bay Shore.

/3 Count 2 was dismissed by the court as a lesser crime included in Count 1. The court subsequently vacated the judgment of conviction because of the failure of the

(continued on page 17)

I. 258

/3 (continued)

government to disclose the existence of plea bargaining negotiations with Jack Dempsey, the key government witness. Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763 (1972). See memorandum of decision dated December 16, 1974.

/4 Later, Lucchetti was to charge that Rohl suggested this abortive dismissal as a ploy to create a basis for a mistrial.

/5 Lucchetti was confined to the Suffolk County jail awaiting trial on state charges of bank robbery.

/6 The Second Circuit Court of Appeals affirmed Lucchetti's conviction on June 12, 1972, 451 F.2d 846 (2d Cir. 1972).

/7 A motion to reduce the sentence was not made until March 2, 1973. At that time, Moore requested an adjournment of the motion to reduce on the representation by Lucchetti that he could supply information as to the whereabouts of Lawrence Russo, who had escaped from custody and was

(continued on page 18)

/7 (continued)

facing multi-bank robbery charges (Lawrence Russo was a brother-in-law of Lucchetti). The court denied the application for an adjournment and indicated that it regarded Lucchetti as too great a risk and it would not consider a reduction of sentence because of Lucchetti's cooperation.

/8
Lucchetti was not eligible for parole under the sentence imposed until 1978.

/9
Certiorari was denied on November 6, 1972.

/10
Lucchetti claimed that Rohl "washed" most of the proceeds of the robberies at a fee of 10%. Lucchetti fails to answer the questions that arise from the method he says was employed:

> 1) a portion of the proceeds was retained or distributed by Lucchetti. Since he took the risk of retaining bait money why did he pay such a high premium to "wash" the rest?
>
> 2) how did Rohl dispose of the bait money? Lucchetti stated that Rohl advised him on robbing banks and was available at the time of the robberies to supply any legal services required. He further charged that Rohl suggested the murder of a witness cooperating with the Suffolk County District Attorney.

/11 Lucchetti's affidavit in support of the motion to suppress, sworn to March 5, 1975, states as follows:

> "Emanuel Moore promised me that my grand jury testimony would never be used against me, either directly or indirectly, in any proceedings either in this court or in any other court."

H. Elliot Wales testified that in January, 1975, he discussed with Moore promises made to Lucchetti as a condition to Lucchetti's testifying before the grand jury and that Moore said that he told Lucchetti that the testimony he gave before the grand jury would never be used against him in any way. Wales' affidavit in support of the motion to suppress states:

> "Emanuel Moore told me that in October 1972, he had absolutely no intention of indicting or prosecuting Charles Lucchetti with respect to any other bank robberies. He told me that his only interest in having Lucchetti testify before the grand jury was in connection with an investigation of Kennth [sic] Rohl."

Moore testified that the only statement he made to Wales concerning his intention as to the use of the testimony was that he did not intend to use the testimony and that this was based on the fact that Lucchetti was serving a twenty-year term under a

(continued on page 20)

/11 (continued)

sentence that was affirmed by the Court of Appeals and certiorari denied by the Supreme Court and that he considered that punishment sufficient for the crimes that Lucchetti confessed to. This testimony is consistent with the testimony of Special Agent Long, the Waiver of Immunity signed by Lucchetti in the grand jury room, and the statements made in the recorded grand jury proceedings. Lucchetti was advised in the presence of the grand jury before he testified that he was the "subject of an investigation presently being conducted by the Federal Grand Jury for the Eastern District of New York . . . that anything [you] might say before the Grand Jury could be used against you in a proceeding or proceedings . . . you need not testify as to those matters which tend to incriminate you . . . you can refuse to testify and assert your rights under the Fifth Amendment of the United States Constitution . . . you [do] have a right to consult with counsel of your own choice and if you cannot afford an attorney, the court will appoint one if you so desire."

/12

Maxey was arrested on September 27, 1972. McCabe was the government's main witness in United States v. Maxey, 72 CR 1098. Maxey was found guilty and sentenced to a term of twenty years. Russo and Santillo were fugitives; they were arrested in California on April 14, 1973.

/13

In Spano, the defendant was a 25-year old male born in Messina, Italy. He had a steady employment record, but there was a history of emotional instability. An indictment charging Spano with first-degree murder was returned on February 1, 1957. He called his close friend, Gaspar Bruno, a fledgling police officer, on February 2rd, to advise him that he had retained counsel and intended to give himself up the next day. He surrendered to the authorities in the company of his lawyer. His lawyer cautioned him to answer no questions and left him in the custody of the officers. He was immediately taken to the office of an assistant district attorney and questioned consistently for five hours. He refused to answer any questions and requested

(continued on page 22)

/13 (continued)

to see his lawyer. The request was denied. The inquisitors then decided to use Bruno to extract a confession. They told Bruno to tell Spano that Spano's call to Bruno had gotten the latter into a lot of trouble. When the scheme failed, Spano again asked for his lawyer. Bruno made three additional tries. "Inevitably in the fourth such session directed by the lieutenant, lasting a full hour, petitioner succumbed to his friend's prevarications and agreed to make a statement." (360 U.S. at 319, 79 S.Ct. at 1205).

A partial recital of the facts in Massiah as reported in the opinion is helpful:

> [A] superseding indictment was returned . . . charging the petitioner and Colson, and others with having conspired to possess narcotics aboard a United States vessel . . . . The petitioner, who had retained a lawyer, pleaded not guilty and was released on bail, along with Colson.
>
> A few days later, and quite without the petitioner's knowledge, Colson decided to cooperate with the government agents in their continuing investigation of the narcotics activities in which the petitioner, Colson, and others had allegedly been engaged. Colson permitted an agent named Murphy to install a Schmidt radio transmitter under the front seat of Colson's automobile.

(continued on page 23)

FPI—83—3-17-72—30M—9153

/13 (continued)

> On the evening of November 19, 1959, Colson and the petitioner held a lengthy conversation while sitting in Colson's automobile, parked on a New York street. By prearrangement with Colson, and totally unbeknown to the petitioner, the agent Murphy sat in a car parked out of sight down the street and listened over the radio to the entire conversation.

(377 U.S. at 202-203, 84 S.Ct. at 1201).

No facts are stated in McLeod. In a per curiam opinion, the conviction was reversed on the authority of Massiah.

/14 It is probable that the apparent sympathetic treatment Lucchetti received in the Suffolk County Court on the serious charges pending there was a result of his cooperation.

/15 In Santobello, defendant agreed to plead to a lesser-included offense, and the prosecutor agreed to make no recommendations as to sentence. At time of sentencing, the prosecutor (a different assistant district attorney who was unfamilar with the promise made) recommended a one-year sentence. Defendant was sentenced to a term of one year.

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ MAY 13 1975 ★
TIME A.M.
P.M.
M'FILMED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - -

UNITED STATES OF AMERICA

-against-

CHARLES LUCCHETTI,

Defendant.

- - - - - - - - - - - - - - - - - -

71 CR 849
75 CR 25
75 CR 288

Memorandum of Decision and Order

May 12, 1975

MISHLER, CH. J.

The defendant, Charles Lucchetti, acting pro se, has submitted six different sets of motion papers for the court's consideration. In papers filed March 5, 1975, Lucchetti's then-retained counsel moved for discovery and inspection, suppression and dismissal of the indictments 71 CR 849 and 75 CR 25. Lucchetti's pro se motions are primarily directed toward discovery and dismissal of the indictments.

MOTIONS FOR DISCOVERY

Defendant has filed two motions generally requesting discovery, the first on April 18, 1975, pertaining to indictments 71 CR 662 (superseded), 71 CR 849, 75 CR 25,

FPI—88—3-17-72—30M—9153

and the second on April 30, 1975, pertaining to indictment 75 CR 288. The parts of the motions which request production of statements made by the defendant and disclosure of information concerning potential witnesses have already been complied with. The government has represented that, with regard to 71 CR 849, all of the statements made by the defendant have been turned over to him, as well as all relevant materials pertaining to David Williams and Jack Dempsey, the government witnesses. With regard to 75 CR 25 and 75 CR 288, the government has similarly represented that all the materials to which the defendant is entitled will be turned over to him before the commencement of those trials. Defendant also requests disclosure of all evidence and information relevant to witnesses which the government does not intend to use. Precisely because the government is not intending to use particular pieces of evidence or call certain witnesses, the government need not be required to disclose any of this material to the defendant.

In these motions, Lucchetti also requests an order compelling the government to disclose "all evidence relevant to the guilt and/or innocence of the defendant." This demand for disclosure is far too broad and general

FPI—883—3-17-72—30M—9153

and must be denied on that ground.

Lucchetti also includes in these motions a demand for a bill of particulars. The purpose of a bill of particulars is to sufficiently inform a defendant of the charges in order that he may prepare his defense, avoid surprise at trial, and be given protection against further prosecution for the same offense, United States v. Martinez, 466 F.2d 679 (5th Cir. 1972); United States v. Leach, 427 F.2d 1107 (1st Cir. 1970), cert. denied, 400 U.S. 829, 91 S.Ct. 57; United States v. Mavrogiorgis, 49 F.R.D. 214 (S.D.N.Y. 1969).

In indictment 71 CR 849, the defendant is charged with robbing a bank insured by the Federal Deposit Insurance Corporation in violation of 18 U.S.C. §2113(a) and (d) and with conspiring to violate 18 U.S.C. §2113(a) and (d) in violation of 18 U.S.C. §371. The dates of the bank robberies are specified in the indictments, the approximate dates of the alleged conspiracies are specified, and the names of the alleged co-conspirators are given. In indictment 75 CR 25, defendant is again charged with robbing a bank in violation of 18 U.S.C. §2113(a) and (d), and again the date of the robbery and the identities of the other participants

are given. Indictment 75 CR 288 charges the defendant with conspiring with two others to violate 18 U.S.C. §2113(a) and (d) in violation of 18 U.S.C. §371. Again the approximate dates of the conspiracy and the identities of the co-conspirators are alleged.

The defendant is entitled to no more. The indictments have shown all that they are required to show. United States v. Leach, 427 F.2d 1107 (1st Cir. 1970). The government cannot be compelled, by means of a motion for a bill of particulars, to reveal all of the elements of its case, United States v. Perez, 489 F.2d 51 (5th Cir. 1973). Nor can it be forced to limit its own proof by a demand from the defendant for extreme specificity. United States v. Anderson, 368 F. Supp. 1253 (D. Md. 1973); United States v. Crisona, 271 F. Supp. 150 (S.D.N.Y. 1967), aff'd., 416 F.2d 107 (2d Cir. 1969).

Finally, in these motions, Lucchetti asks that the indictment be dismissed because of the systematic and purposeful exclusion from jury lists of the "poor, unlearned, non-affluents, Spanish, Negroes of poor background" and of "18-19-20 year olds." This court has on prior occasions conducted hearings on challenges to the composition of the

jury lists in this district. The court is satisfied that the jury composition is in accordance with the district's plan and is constitutional. In any case, defendant's argument is premature. It may well be that when the jury is selected for the defendant's trial it may include persons of exactly the type which the defendant claims are excluded from lists of prospective jurors.

Lucchetti's motions for discovery, including bills of particulars, and for dismissal of the indictment because of unconstitutional jury lists are denied.

MOTION FOR PRODUCTION OF GRAND JURY TESTIMONY

In his motion of April 30, 1975, defendant asked for an order directing the government to produce a copy of all of the evidence and testimony submitted to grand juries in 1972 and 1975, relating to indictment 75 CR 25, and that submitted to grand juries in 1971 on indictments 71 CR 662 and 71 CR 849. Included in this motion is a request for all statements made to the grand juries by the Assistant United States Attorneys. Defendant states only that he needs this evidence in order to prepare further motions.

Rule 6(e) of the Federal Rules of Criminal Procedure requires a defendant to show a particularized need before he is permitted general discovery of the grand jury minutes. Pittsburgh Plate Glass Company v. United States, 360 U.S. 395, 79 S.Ct. 1237 (1959). Defendant's statement that he wants access to the grand jury testimony in order to prepare further motions is not a sufficient showing of particularized need to warrant a breach of grand jury secrecy. Defendant's motion is accordingly denied.

MOTIONS TO DISMISS THE INDICTMENTS

Lucchetti has offered a variety of grounds for dismissal of all three indictments pending against him. As to indictment 71 CR 849, defendant moves to dismiss on the grounds that Jack Dempsey was given David Williams' grand jury testimony before Dempsey himself testified before the grand jury and that the government knowingly and wilfully withheld prior statements of these witnesses from the original trial on this indictment. The first ground alleged does not constitute a basis for dismissal. The fact that Dempsey knew of Williams' grand jury testimony is irrelevant, and Lucchetti has failed to show how he was prejudiced by Dempsey's prior knowledge of Williams' testimony. The

second ground argued for dismissal is, in fact, the ground on which this court, in a memorandum of decision and order dated December 16, 1974, vacated the original judgment in 71 CR 849 and ordered a new trial. The defendant is not entitled to alternative relief, i.e., a new trial or dismissal of the indictment. This asserted ground for dismissal has been answered by the granting of a new trial.

Lucchetti puts forth numerous other grounds for dismissal of 71 CR 849, first of all that certain witnesses he would like to call are no longer available or willing to testify in his behalf. However, he fails to identify the witnesses or specify the nature of their testimony. Secondly, the defendant argues that he was denied a speedy trial when this case was first tried in 1971. Defendant's claims concerning delay were waived when he actually went to trial on 71 CR 849. The defendant also argues a double jeopardy claim with regard to the retrial of 71 CR 849. But this ground for dismissal must also fail;double jeopardy does not attach where the original conviction has been set aside and a new trial granted on defendant's application. Ball v. United States, 163 U.S. 662, 16 S.Ct. 1192 (1896). As for the defendant's argument that the

government suppressed Brady materials and other materials required to be turned over to defendants pursuant to 18 U.S.C. §3500, defendant has been granted a new trial on precisely these grounds and he is not additionally or alternatively entitled to a dismissal. Finally, the defendant argues that this indictment should be dismissed because the date set for the new trial is four years from the date of the alleged offense, and this delay makes a fair trial impossible. The Supreme Court in Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182 (1972), established four tests for determining whether the right to a speedy trial has been violated. The fourth test requires that the defendant show that the delay has resulted in substantial prejudice. Lucchetti has failed to make any such showing. The long time period between the alleged offense and the date of the new trial is attributable, if nothing else, to the fact that defendant did not successfully move to have the original conviction set aside until July 30, 1974. /1

/1 Defendant's motion pursuant to 28 U.S.C. §2255 was filed on July 30, 1974. Hearings were held on October 29, 1974, November 1, 1974 and November 4, 1974. The court rendered its decision vacating the conviction on December 16, 1974.

A 22

Defendant also moves to dismiss indictment 75 CR 25 on the ground that his defense has been hampered by delay, in this case alleged unreasonable pre-indictment delay. Again, the defendant has offered no factual support for his claim. A defendant does not have a constitutional right to a speedy indictment. "[W]here unconstitutional pre-indictment prejudicial delay is alleged, it must be supported." United States v. Smith, 487 F.2d 175, 177 (5th Cir. 1973), citing Schlinsky v. United States, 379 F.2d 735, 737 (1st Cir. 1967). "[I]t is incumbent upon the accused to demonstrate that the delay has so impaired his capacity to prepare a defense as to amount to . . . a denial of due process . . . ." United States v. Capaldo, 402 F.2d 821 (2d Cir. 1968). Defendant has simply stated that he has been prejudiced by the delay, but he has not shown how he has been prejudiced. Accordingly, his motion to dismiss 75 CR 25 on the ground of prejudicial delay must be denied.

Defendant moves to dismiss all three of the pending indictments on the ground of lack of jurisdiction. Lucchetti argues that federal jurisdiction over bank robberies cannot be predicated on the fact that banks are insured by the Federal Deposit Insurance Corporation (FDIC)

because the federal government no longer has any financial or proprietary interest in the FDIC. Lucchetti analogizes the alleged jurisdictional requirement in criminal cases to the rule presented in 28 U.S.C. §1349 to the effect that, in a civil case, jurisdiction may not be conferred on a federal court simply by the fact that one of the parties is a corporation created by Act of Congress. Only when the United States owns more than one-half of the corporation's stock is there a basis for federal jurisdiction. Defendant's argument falls of its own weight. The rules established for federal jurisdiction in civil actions are not applicable to criminal cases. Just as Congress had the power to limit federal jurisdiction in civil cases, it also had the power to confer federal jurisdiction over criminal offenses. Congress determined that robbery of a bank insured by the FDIC could be prosecuted in a federal court; it is irrelevant whether the United States has any propriety interest in the FDIC. Defendant is grasping at straws with this argument; federal jurisdiction over robberies of FDIC-insured banks pursuant to 18 U.S.C. §2113 is simply indisputable.

All of defendant's motions to dismiss the pending indictments are denied.

MOTIONS FOR ASSISTANCE UNDER THE CRIMINAL JUSTICE ACT

Allen Lashley, Esq., has been appointed under the Criminal Justice Act to represent the defendant. Lucchetti now moves for permission to continue as co-counsel with Mr. Lashley. Such an arrangement is clearly unusual and not to be encouraged. However, as the court has previously said, Lucchetti will be permitted to act as his own counsel. Mr. Lashley will remain in the case with the defendant and will advise the defendant whenever requested by the defendant to do so.

Pursuant to the Criminal Justice Act, Lucchetti has also requested that transcripts of the following proceedings be furnished to him: March 2, 1973; January 3, 1975; January 9, 1975 (2); January 15, 1975; March 12, 1975; April 3, 1975; April 11, 1975; and April 18, 1975. He also asks that he be permitted the use of an investigator to help him prepare his defense. Those proceedings which have been transcribed have been furnished to the defendant. The remaining proceedings will not be transcribed and turned over to the defendant unless the defendant can show a need for the transcripts. So far, he has simply made the request with no showing of need or use to which he could put the

transcripts. Similarly, Lucchetti's demand for the use of an investigator must be denied because he has failed to show sufficient need for an investigator.

MOTION FOR DISQUALIFICATION

Defendant has already moved once to have the undersigned disqualify himself from presiding over the defendant's pending trials. In a memorandum of decision and order filed April 17, 1975, this motion was denied. Defendant now renews this motion, but fails to put forward any new arguments in favor of disqualification which should be considered by the court. Accordingly, for the reasons stated in this court's prior decision, defendant's renewed motion is denied.

Order in accordance with the above rulings.

U. S. D. J.

UNITED STATES DISTRICT COURT

Memorandum

TO : Honorable Jack B. Weinstein DATE: May 14, 1975

FROM : Jacob Mishler, Chief Judge

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ ★
MAY 15 1975
TIME A.M.
P.M.

SUBJECT: 71-CR-849 - U.S.A. v. Charles Lucchetti
Brief Summary of Proceedings Subsequent to the Imposition of Sentence After Trial (Defendant Was Sentenced October 15, 1971).

On December 16, 1974 this court vacated the sentence imposed after a hearing on a petition, based on 28 U.S.C. §2255. The court found that the government failed to disclose the plea bargaining negotiations with Jack Dempsey, the government's main witness. Dempsey testified at the trial that he had no understanding concerning the disposition of the charges against him. (Copies of all memoranda referred to in this memorandum are submitted herewith.)

The memorandum of decision and order of December 16, 1974 set the case down for trial on January 20, 1975, and fixed bail in the amount of $75,000, to be secured by real estate and cash of $7,500. On application of defendant, the case was continued to March 31, 1975.

The grand jury on January 19, 1975, returned indictment 75-CR-25 (based on confessions now challenged by defendant). Upon return of the indictment, the court increased bail to $200,000, and, as an additional security, required the execution of security agreements by other individuals.

48

The defendant violated the conditions of bail and was not present when the case was called for trial on March 31, 1975. Defendant was a fugitive on that day; he was apprehended and bail was increased to $500,000 (surety company bond). Defendant is presently in custody, and has been since his surrender prior to April 3, 1975.

H. Elliot Wales, Esq., was retained by defendant prior to March 31, 1975, replacing John Corbett, Esq., court assigned counsel. On April 3, 1975, the court set the case down for trial for May 5, 1975. (Defendant expressly waived his right to a speedy trial for the period of time from April 3, 1975 to May 5, 1975.)

The defendant moved to suppress statements made to F.B.I. agents and testimony given before the grand jury. The court directed a hearing on the motion on May 2, 1975. The hearing commenced on said date.

The court appointed Allen Lashley, Esq., to represent the defendant, and relieved Mr. Wales on April 15, 1975.

The hearing continued on May 5, 1975. Defendant advised the court he chose to act as his own counsel. Defendant requested that the court issue numerous subpoenae, but declined to identify the individuals or the nature of their testimony. Defendant refused to advise the court as to whether or not he would testify in the hearing (Hearing Transcript, p. 200).

When the continued hearing was called on May 8, 1975, defendant, acting pro se, submitted a list of 26 witnesses he wished subpoenaed.

He indicated that he wished to take the stand, but would not do so until these witnesses testified (Hearing Transcript, pp. 232, 235, 239 and 263). Finally, defendant asserted that he wished to take the stand, but wanted an adjournment to gather the materials he had at West Street (Hearing Transcript, p. 265). The court thereupon continued the hearing until May 9, 1975.

On May 9, 1975, the defendant offered H. Elliot Wales, Esq., and Henry Boitel, Esq. (who had represented defendant as appellate counsel) as witnesses in his behalf. At the court's direction, the government produced Special Agent Achenbach and Assistant United States Attorney Emanuel Moore. The court again inquired as to whether defendant would testify. At this point he refused to testify on the ground that he was denied the testimony of witnesses through the refusal of the court to issue subpoenae (Hearing Transcript, p. 374-375). The court thereupon found that the statements defendant made to the F.B.I. agents and the testimony he gave to the grand jury were knowingly and voluntarily made, and denied the motion to suppress. On May 12, 1975, the court made and filed its memorandum of decision and order denying suppression. On May 12, 1975, the court also made and filed a memorandum of decision and order denying various pro-se discovery motions and a motion to dismiss the indictment. The trial was scheduled to start on May 12, 1975. At that time, the defendant offered to testify with reference to the voluntariness of the statements made. The court denied his application.

The government claims that the statements made to F.B.I. agents

and defendant's grand jury testimony were motivated by defendant's desire to solicit the help of the government in obtaining a reduction of the sentence and/or early release on parole. On this premise, the government sought to introduce evidence of the conviction in the prior trial before me, and also show where the statements to the F.B.I. agents were made, i.e. the Federal House of Detention at West Street and the Suffolk County Jail. I ruled that such evidence was inadmissible on direct examination, and cautioned the defendant of the possibility that such evidence might become available to the government if the cross-examination expanded the area covered in the direct examination.

The Assistant United States Attorney inadvertently, while reading the grand jury testimony, read a question which indicated, or might have indicated, to the jury that defendant had been convicted. I thereupon declared a mistrial.

When the mistrial was declared, the defendant indicated he would reconsider his previous position in acting pro se, and permit Mr. Lashley to represent him in the trial. The defendant was fully informed of the risks in acting as his own counsel.

Chief Judge

Memoranda of Decisions attached dated:
December 16, 1974
May 12, 1975 (2)

cc: Allen Lashley, Esq.
AUSA Joan O'Brien
Charles Lucchetti

pc
e 3pm/3

(The jury entered the courtroom at 3:57 p.m.)

THE COURT: Ladies and gentlemen of the jury, it is now my responsibility to instruct you with respect to matters of law.

It is your duty as jurors to follow these instructions. It is your responsibility -- and yours alone -- to judge the facts in this case. You are the sole judge of the facts -- not counsel -- not I.

Neither counsel nor I can assist you after you go into the jury room, except if you send in a note.

I have no view of the guilt or innocence of this defendant. Nothing I have said or done, or that the lawyers or the defendant have said or done during the course of this trial should be used by you in inferring innocence or guilt. You will decide the case solely on the evidence before you and the law.

The fact that the prosecution is brought in the name of the United States does not entitle the Government to any greater consideration than any other litigant. All parties -- Government and individuals -- are equal before this Court. All parties are entitled to equal consideration. No

party is entitled to sympathy or favor.

An indictment is an accusation in writing. It is no evidence of guilt and it is entitled to no weight in your judgment of the facts.

This defendant has pled not guilty. The Government has the burden of proving guilt beyond a reasonable doubt with respect to each element of the crime the defendant is charged with committing and this burden never shifts throughout the trial.

A defendant does not have to prove his innocence. The law does not compel a defendant in a criminal case to take the witness stand and testify. No inference of any kind may be drawn from the failure of this defendant to testify. On the contrary, the defendant in a criminal case is presumed to be innocent and the Government must prove his guilt as to each and every element of the offense beyond a reasonable doubt.

A reasonable doubt means a doubt sufficient to cause a prudent person to hesitate to act in the most important affairs of his life. Reasonable doubtmay result from the evidence produced or from failure to produce evidence.

Finding an individual to be guilty of committing a felony and subjecting him to criminal

penalties is most serious, and you will consider this fact in deciding whether you have a reasonable doubt.

Nevertheless, if at the end of the trial, you are convinced beyond a reasonable doubt that a defendant is guilty of a crime charged, then you should find him guilty of that crime.

It must be established beyond a reasonable doubt that a defendant acted wilfully and knowingly before he may be found guilty of a crime.

An act is wilful and knowing if it is done intentionally, deliberately and voluntarily, with the specific intent to accomplish something the law forbids -- that is to say, with the bad purpose to rob a bank.

The state of mind of a defendant may be inferred from the circumstances as revealed by the evidence in the case.

The defendant is charged with three counts or crimes. You must consider each one separately.

Count one of the indictment reads as follows:

On or about the 21st day of December, 1970, within the Eastern District of New York, the

Charge

defendant David Williams, the defendant Jack Dempsey, and the defendant Charles Lucchetti did knowingly, wilfully and feloniously, by force, violence and intimidation, take approximately $25,000 in United States currency from the persons and presence of employees of the First National Bank of Bayshore, community branch, 340 Howells Road, Bayshore, New York, which money was in the care, custody, control, management and possession of the said First National Bank of Bayshore, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, Title 18, United States Code, Section 2113(a), Title 18, United States Code, Section 2.

Section 2113(a) reads as follows:

Whoever, by force and violence or by intimidation, takes from the person or presence of another, any property or money or any other thing of value belonging to or in the care, custody, control and management or possession of any bank insured by the Federal Deposit Insurance Corporation is guilty of a crime.

In this case it is not contested that there was a bank robbery within the meaning of Section 2113

(a).

The issue for you to determine is whether the defendant was involved in this robbery, either as a principal or an aider and abettor.

The aiding and abetting section of the United States Code reads as follows:

Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal.

The Government must prove four elements in order to succeed in convincing you beyond a reasonable doubt that this defendant is guilty of this crime:

First, that the defendant, or someone he was aiding to commit the robbery, took the money.

You will recall the testimony of Jack Dempsey that after taking the money from the bank he gave it to Mr. Lucchetti, and the testimony of Mr. Dempsey and Mr. Williams that Mr. Lucchetti planned and assisted in the robbery.

The defendant contends that they lied to obtained leniency for themselves and the defendant also contends that his corroborative testimony in

the Grand Jury is not accurate and was the result of the perjury and other reasons that he related to you in connection with his summation.

It is only necessary that the Government prove that more than $100 was stolen.

Mr. Badenious, the bank auditor, testified that approximately $25,000 was stolen from the bank, and Mr. Dempsey and Mr. Williams testified with respect to counting substantial sums and receiving substantial sums as a result of the robbery;

Second, that such money was taken from the person or presence of others in the care, custody, control or possession of a bank which is insured by the Federal Deposit Insurance Corporation.

A certificate of a Federal Deposit Insurance Corporation was produced in court, and Mr. Badenious testified that the bank was insured by the Federal Deposit Insurance Corporation and there was testimony with respect to one of the participants jumping over the counter and actually taking money from the tellers' positions.

Third, that such money was taken by force, violence or intimidation.

7

Charge

With regard to this element, you will recall the testimony of Mr. Dempsey and other evidence that a gun was used during the robbery. Force or violence means physical force unlawfully exercised.

Intimidation means putting in fear, but the fear must be from the conduct of the accused such as objectively would cause a reasonable expectation of bodily harm, rather than mere tempermental timidity.

Fourth, these acts must have been committed knowingly and wilfully. I have already discussed this element with you.

Now, the second count of the indictment is basically the same as the first count, except that count two charges that in the bank robbery, a dangerous weapon was used, thereby placing lives in jeopardy.

In other words, that a loaded gun capable of firing was used in the robbery.

Count two reads as follows:

On or about the 21st day of December, 1970, within the Eastern District of New York, the defendant David Williams, the defendant Jack Dempsey, and the defendant Charles Lucchetti, did

8

Charge

knowingly, wilfully and feloniously, by force, violence and intimidation, take approximately $25,000 in United States currency from the persons and presence of employees of the First National Bank of Bayshore, community branch, 340 Howells Road, Bayshore, New York, which money was in the care, custody, control, management and possession of the said First National Bank of Bayshore, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, an act and offense in violation of Section 2113(a), Title 18, United States Code, and in the commission of this act and offense this defendant David Williams, the defendant Jack Dempsey and the defendant Charles Lucchetti assaulted and placed in jeopardy the lives of the said bank employees, as well as the lives of other persons present, by the use of dangerous weapons, Title 18, United States Code, Section 2113(d), Title 18, United States Code, Section 2.

One weapon is enough.

Section 2113)d) makes it a crime to assault any person or put in jeopardy the life of any person by the use of any dangerous weapon or device

9

Charge

while committing an offense such as the one described in count one, the robbery of the bank.

In order to find the defendant guilty of count two, you must find beyond a reasonable doubt that a loaded gun, capable of firing a bullet was used and that, as above, the defendant acted as a principal or aided and abetted the bank robbery.

In other words you have to find all the four elements of count one plus the fact that a loaded weapon capable of firing was used.

Mr. Dempsey testified the gun and bullets were wiped, and the bullets placed in the gun before the robbery, and he and Williams testified that the gun came from the defendant.

The defendant again claims that they are lying and did lie in order to obtain reductions of their own sentences. The defendant need not be in the bank or holding a gun to be guilty on this count, if he was a partner in the crime.

The third count is a conspiracy count, [illegible], and it reads as follows:

On or about and between the first day of December, 1970, and the 21st day of December, 1970, both dates being approximate and inclusive, within

the Eastern District of New York, the defendant David Williams, the defendant Jack Dempsey, and the defendant Charles Lucchetti, wilfully and knowingly conspired together and with each other to commit offenses against the United States in violation of Title 18, United States Code, Section 2113(a) and Section 2113(d) by conspiring to take by force, violence and intimidation from the persons and presence of employees of the First National Bank of Bayshore, community branch, 340 Howells Road, Bayshore, New York, monies and things of value in the care, custody, control, management and possession of the said First National Bank of Bayshore, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, and in the commission of said acts and offenses, conspired to assault and place in jeopardy the lives of the said employees of the said First National Bank of Bayshore, by the use of dangerous weapons, Title 18, United States Code, Section 371.

This means that they got together and planned in advance to carry out the bank robbery and did an act in connection with it.

11

Charge

This conspiracy charge constitutes a violation of Section 371 of Title 18, United States Code, and that Section reads as follows:

If two or more persons conspire to commit any offense against the United States, and one or more of such persons do any act to effect the objects of the conspiracy, each is guilty of a felony.

The elements of the crime of conspiracy are first, that there be two or more persons involved;

Second, that they wilfully and knowingly conspire or agree;

Third, that they conspire to commit an unlawful act;

Fourth, that one of the members of the conspiracy do an act to effect the object of the conspiracy after the conspiracy is formed.

Let me first tell you about the first and second elements.

If the defendant Lucchetti agreed with either Dempsey or Williams to rob the First National Bank of Bayshore, then there would be a conspiracy.

A conspiracy is a combination of two or more persons to accomplish an unlawful purpose or a lawful

purpose by an unlawful means.

While it involved an agreement to violate the law, it is not necessary that the persons charged entered into an express or formal agreement or that they stated, orally or in writing, what the scheme was, or how it was to be effected. It is sufficient to show that they came to a mutual understanding to accomplish an unlawful act.

Such an agreement may be inferred from the circumstances and the conduct of the parties, since ordinarily a conspiracy is characterized by secrecy.

Each member of the conspiracy may perform separate and distinct acts. It is necessary, however, that the Government prove beyond reasonable doubt that a defendant was aware of the common purpose, and was a willing participant with the intent to advance the purpose of the conspiracy.

The extent of defendant's participation is not determinative of his guilt or innocence. A defendant may be convicted as a conspirator even though he plays a minor part in the conspiracy.

The third element is that the conspiracy be to commit an unlawful act.

Robbing a bank is an unlawful act.

13

Charge

The fourth element of the conspiracy is that there be an act to effectuate the conspiracy.

Under our law, it is not enough to merely agree to do an unlawful act. Someone has to begin to carry it out. It is not necessary that everything be done, but under the circumstances here, you would have to find that the robbery was committed, that is, these two people who testified, did go into the bank and rob the bank.

There appears to be no dispute about their participation. That would be an overt act.

The Grand Jury charged an overt act and the elements of the first two counts -- in other words, the charge that these two people did go into the bank, and that they did it at the instance and with the aid of Mr. Lucchetti.

If you find beyond a reasonable doubt that a conspiracy existed as charged in the indictment, and that during the existence of the conspiracy, one of the overt acts alleged was knowingly done in furtherance of the conspiracy, proof of the conspiracy is then complete. It is complete as to the defendant, if he is found beyond a reasonable doubt to have knowingly and wilfully been a member

of the conspiracy at the time the overt act was committed.

A difficult problem is for you to determine the credibility of the witnesses because the defendant's main contention here is that they were lying and that the Grand Jury testimony related to you was untrue.

In weighing the testimony, the testimony given here or testimony that is given to you which was given at another trial or before the Grand Jury, you may consider the relationship of the witness to the Government or to the defendant, the witness' bias or interest in the outcome of the case, his manner while testifying, his or her candor as you observed it, or if you deduced it from the testimony that was read and the extent to which it has been corroborated or contradicted by other credible evidence.

Williams and Dempsey were admitted criminals and co-conspirators. Their testimony must be carefully scrutinized because of their bad character as revealed by their criminal acts. That makes them less reliable as witnesses and also because they may have testified as they did to court favor with

the Government. You may however, rely upon such testimony of a conspirator as you believe.

If you believe that a witness has wilfully sworn falsely before you with respect to material elements of the case, you may disregard his testimony in whole or in part, but a witness may have been mistaken or may have lied with respect to part of their testimony and be accurate with respect to other parts.

The mere number of witnesses and documents has no necessary relationship to the burden of proof.

Your recollection of the evidence governs.

If you wish to have some of the testimony repeated, you may make requests and I will call you into court and have the reporter read the portions you desire to hear.

If you are confused, you may send in a note asking for help.

You are entitled to your own opinions, but you should exchange views with your fellow jurors and listen carefully to each other.

While you should not hesitate to change your opinion if you are convinced that another opinion is correct, your decision must be your own.

Any verdict you reach must be unanimous.

Your oath sums up your duty and that is, without fear or favor to any man, you will well and truly try the issues before these parties according to the evidence given to you in court, and the laws of the United States.

If you wish to have some of the testimony read, send in a note and we will read it to you. Be specific so we don't have to re-read the whole case. If there is a portion you would like read, let me know, and we will try to find it. If you want any exhibits, send out for them and I will send them in.

I don't want to send them in unless-- I don't want to send the gun in unless you really want it. It is not loaded, is it?

MISS O'BRIEN: No, your Honor.

THE COURT: If you are confused about the law and want more help, send in a note.

If you want any help on anything, send in a note.

Now, I am going to excuse the four alternates because we have not needed them. I instruct the four of you not to discuss the case with each other

or anyone else until the verdict is rendered.

You may go downstairs and wait in the main jury room and in case you are needed, by the end of the day, we will know where to findyou .

Any objection to excusing these four alternates?

MR. LUCCHETTI: No.

MISS O'BRIEN: No.

(Side bar discussion out of hearing of the jury:)

THE COURT: Any objections or requests?

MISS O'BRIEN: No, your Honor.

MR. LUCCHETTI: None, your Honor.

MR. LASHLEY: None, your Honor.

THE COURT: Swear the marshals, please.

(The marshals were thereupon swornby the clerk.)

THE COURT: Would the Court Clerk give the jury some papers and pencils?

All right, now retire and consider your verdict, ladies and gentlemen.

(The jury withdrew from the courtroom at 3:20 p.m.)

(continued next page.)

(Out of the hearing of the jury)

THE COURT: Have you seen Court Exhibit 2, the note asking to see the evidence that C. Lucchetti confessed on two occasions.

MS. O'BRIEN: Yes.

MR. LUCCHETTI: Yes.

THE COURT: As I understand, the minutes of the Grand Jury were redacted so that we can't send them in. That was one occasion. The other occasion was, of course, testified to by the FBI Agent. Therefore they will have to be brought in. Is that correct?

MS. O'BRIEN: Yes.

MR. LUCCHETTI: Could we ask the jurors -- they might want August 3rd and August 8th.

MR. LASHLEY: They might be just talking about the two confessions to Mr. Long and not the Grand Jury minutes at all.

THE COURT: Find for me the two statements by Agent Long in the transcript and that portion of the transcript in which the Grand Jury minutes were marked and read and I will call them in. Let me know as soon as you have completed that, please.

(At 4:15 p.m., out of the hearing of the jury)

THE COURT: Well, the defendant wants 379, Line 7 to 35 Line 2. The government wants 379 Line 7 to

2 386 Line 10. Both agree that the Grand Jury material from 410 to 417, --

MR. LASHLEY: The defendant does not agree that the Grand Jury is what the jury wants.

MS. O'BRIEN: The government's position is they do want that.

THE COURT: Well, if we are going to read it, we will read up to the point the government wants us to read, where the jury tells us to stop.

We will start at Page 411, Line 3. And go to Page 417, Line 3.

All right, bring in the jury, please.

((At 4:17 p.m., the jury entered the courtroom.)

THE COURT: I have your note saying: "We see the evidence showing that C. Lucchetti confessed on two occasions." Now, we have the testimony of Agent long and we also have the Grand Jury minutes. Do you want the testimony of Agent Long read or the Grand Jury minutes or both?

All right, the Reporter will read both.

All right, thank you very much.

(The jury withdrew at 4:30 p.m.)

(Continued on next page.)

ds;pc
ake 4pm/1

(The following occurred at 4:55 o'clock p.m. in the absence of the jury:)

THE COURT: Have you seen Court's exhibit 3, "Did C. Lucchetti admit to providing the guns?"

MISS O'BRIEN: Yes, your Honor.

The only reference to guns in Agent Longs testimony, it is at 384, and he said he took these guns in May, which is not providing the gun, taking the gun.

MR. LASHLEY: That was read to the jury already, and it is not a confession that he provided the guns.

MISS O'BRIEN: It is 384.

MR. LASHLEY: It says guns there too.

THE COURT: Well, is there anything else?

MISS O'BRIEN: No, there is nothing else.

THE COURT: Then I think I have to answer it, "No," is that correct?

MR. LASHLEY: Yes.

THE COURT: I will just write, "No" on it.

Take Court's exhibit 3 in.

First the defendant and counsel may look at what I have written on the note.

(Handing.)

Is that satisfactory?

2

MR. LASHLEY: Yes, sir.

May the marshal say that the judge wrote the "No" to the jury?

THE COURT: I don't think it's necessary.

Bring it right in.

(continued nextpage.)

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(Time noted: 5:25 p.m. Out of the hearing of the jury.)

THE COURT: Court Exhibit 4, a note, asking if Charles Lucchetti had knowledge that the gun was being used, is that the same as if Charles Lucchetti provided the gun.

MS. O'BRIEN: I feel they are inquiring about aiding and abetting as pertaining to the D section of the count.

I think that would be the same.

THE COURT: I believe that's so.

MR. LASHLEY: We feel it couldn't be answered the way it is framed.

THE COURT: All right. Bring in the jury.

I will tell them that if he knew that a gun was being used that he aided and abetted in the robbery and he --

MR. LASHLEY: What about the conspiracy count?

THE COURT: That would be true with regard to the conspiracy count particularly the way the conspiracy count is framed.

It wasn't necessary for the Government to frame the conspiracy count to include the gun but they did so frame it.

xxx

Both under Counts 2 and 3 he would have

2 to have known that the gun -- he would have had to know that there was a gun in working order with it to be used, to be guilty.

Is that correct?

MS. O'BRIEN: Yes, your Honor.

MR. LUCCHETTI: If I had knowledge that a gun was in working order?

THE COURT: Yes.

MR. LASHLEY: If they find he was part of the conspiracy and if they find he was an aider and abettor.

THE COURT: Yes.

Bring in the jury.

(The jury entered the courtroom at 5:28 p.m.)

THE COURT: I have your note, ladies and gentlemen: This refers, of course to Counts 2 and 3, I take it. Is that right?

(All said yes.)

THE COURT: The jurors nod in affirmative.

Under both those counts, if the defendant knew that a working gun was to be loaded, was to be used in the robbery of the bank, and if he were an aider and abettor, as I have charged you, of that robbery, he would be guilty under Count 2. The

same thing is true as to Count 3.

If he conspired to commit the robbery, that he knew the robbery involved the use of a gun loaded and in working order, he would be guilty of that conspiracy to rob that bank with a dangerous weapon.

Is there anything else counsel wish me to tell the jury?

MS. O'BRIEN: No, your Honor.

MR. LASHLEY: Just if they find he was a member of the conspiracy.

THE COURT: Yes, you have to find he was a member of the conspiracy under Count 3, obviously.

Anything else?

MR. LUCCHETTI: No.

THE COURT: He didn't have to supply the gun but he would have to know it was to be used and be a member of the conspiracy.

(The jury withdrew at 5:30 p.m.)

MR. LASHLEY: We didn't have a chance to have lunch, I was wondering what your intentions are as far as dinner.

THE COURT: It seems to me that they will be coming back soon although we don't know. They apparently went through Count 1 and are now working on Count 2 and 3.

They have it down to a simple factual problem. You can get a sandwich in the Treasury Building.

4 Why don't you go down there and get something.

(Time noted: 5:50 o'clock p.m. Out of the hearing of the jury.)

THE COURT: Bring in the jury, please.

(The jury entered the courtroom at 5:51 p.m.)

THE COURT: Madam Forelady, I understand you have reached a verdict.

Have you?

THE FORELADY: Yes.

THE CLERK: How do you find the defendant as to Count 1, guilty or not guilty?

THE FORELADY: Guilty.

THE CLERK: How do you find the defendant as to Count 2, guilty or not guilty?

THE FORELADY: Guilty.

THE CLERK: How do you find the defendant as to Count 3, guilty or not guilty?

THE FORELADY: Guilty.

THE CLERK: As the Court has received your verdict you say you find the defendant guilty as to Count 1, guilty as to Count 2 and guilty as to Count 3 and so say you all?

THE COURT: Poll the jury.

THE CLERK: You have heard the verdict as the Court has received it. Yes or no, is that your

verdict, Juror No. 1?

JUROR No. 1: Yes.

THE CLERK: No. 2?

JUROR NO. 2: Yes.

THE CLERK: No. 3?

JUROR NO. 3: Yes.

THE CLERK: No. 4?

JUROR NO. 4: Yes.

THE CLERK: No. 5?

JUROR No. 5: Yes.

THE CLERK: No. 6?

JUROR NO. 6: Yes.

THE CLERK: No. 7?

JUROR NO. 7: Yes.

THE CLERK: No. 8?

JUROR No. 8: Yes.

THE CLERK: No. 9?

JUROR NO. 9: Yes.

THE CLERK: No. 10?

JUROR No. 10: Yes.

THE CLERK: Juror No. 11?

JUROR NO. 11: Yes.

THE CLERK: Juror No. 12?

JUROR no. 12: Yes.

THE CLERK: And so say you all.

THE COURT: Is there any reason counsel, or defendant why this jury should not now be discharged?

MS. O'BRIEN: No, your Honor.

MR. LASHLEY: No, your Honor.

MR. LUCCHETTI: No, your Honor.

THE COURT: Thank you very much, ladies and gentlemen.

You may or may not discuss this with anyone, depending on your own views. You do not have to talk to anybody about it. You can go home now and be available Tuesday.

What you will do is call in Tuesday morning and they will tell you whether they need you.

Call about 11:00 o'clock before 11:00 o'clock.

Good night, thank you very much.

Have a pleasant holiday.

MR. LUCCHETTI: Application judgment notwithstanding the jury, your Honor.

THE COURT: Denied.

I will sentence you tomorrow morning. I understand that there has been a presentence report which you and your counsel may examine. There may also be a series of reports on what has happened in prison since the sentence.

You can examine them too.

Both counsel can come to my office tomorrow at 9:00 o'clock and obtain those and Mr. Lashley you can show them to the defendant and I will hear you at 10:00 o'clock on the sentence.

MR. LASHLEY: Could you move that up a little later because I have something on tomorrow morning.

I have to be in Manhattan at 9:30. I should be through at 10:00 so I could be here at 10:30 --

THE COURT: All right. Make it 11:00 o'clock. 11:00 o'clock for sentence.

Good night.

* * * *

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U.S. DISTRICT COURT E.D. N.Y.
MAY 29 1975
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-against- :

CHARLES LUCCHETTI, :

Defendant. :

----------:

75CR25

United States Courthouse
Brooklyn, New York

May 23, 1975
11:00 o'clock a.m.

B e f o r e :

HONORABLE JACK B. WEINSTEIN, U.S.D.J.

MICHAEL MIELE
OFFICIAL COURT REPORTER

(66)

Appearances:

DAVID G. TRAGER, ESQ.,
United States Attorney
for the Eastern District of New York

BY: JOAN O'BRIEN, ESQ.,
Assistant U.S. Attorney

CHARLES LUCCHETTI
Pro Se

ALLAN LASHLEY, ESQ.

THE COURT: Has the defendant and his counsel seen the pre-sentence report and the attached documents received from the United States Penitentiary at Lewisburg.

MR. LUCCHETTI: Yes, your Honor.

MR. LASHLEY: Yes, your Honor.

THE COURT: Mark these documents as a Court Exhibit, please.

THE CLERK: Court Exhibit 1.

THE COURT: I will hear the defendant.

THE DEFENDANT LUCCHETTI: Your Honor, at this time I am going to request an adjournment in sentencing. The progress report that is attached to that probation report was made in July of 1973. Since July of 1973 up until the beginning of 1975, I am going to request that the Court direct the Probation Department to update that report.

THE COURT: The report is favorable to the defendant since it shows a good adjustment within prison. The Court will assume that that good adjustment continued. No reason has been shown for a delay. Motion is denied.

THE DEFENDANT LUCCHETTI: I really don't have anything to say, your Honor.

THE COURT: Do you want to say anything in

behalf of your client?

MR. LASHLEY: I just rest on the probation report.

THE COURT: Does the government have anything?

MS. O'BRIEN: No, your Honor.

THE COURT: On Count 2, I sentence the defendant to 20 years under United States Code Section 4208(a)(2)and fine him $10,000.

On Count 3, I sentence him to five years concurrent with Count 2 and a $5,000 fine consecutive with Count 2. The total fine is $15,000. The total incarceration is 20 years, both the 20 years and five year sentence are under 4208(a)2.

No sentence is imposed under Count 1 since it is a lesser included count to Count 2. The Court is convinced, having heard this case and read the probation report, that the defendant is a dangerous and vicious criminal and no reason has been shown why the penalty should be any less than that imposed by Judge Mishler.

Since no appreciable new information has been brought to the Court's attention, the Court is not empowered to impose a higher sentence.

Anything further?

MR. LASHLEY: The time he has served since 1971

I assume that will be credited towards this sentence.

THE COURT: Yes, he is to get credit for all time. That would be true under the law in any event.

Anything further?

THE DEFENDANT LUCCHETTI: No, your Honor.

THE COURT: Thank you very much.

THE DEFENDANT LUCCHETTI: At this time I would like to file notice of appeal with the Court, pro se, one copy to the Assistant United States Attorney, the original and two copies to the Clerk of the Court.

THE COURT: Yes, the Clerk will file these copies. If the defendant wishes counsel and does not have counsel, the Court of Appeals will arrange for appointment of counsel.

In my opinion Mr. Lashley conducted himself with the usual high standards of the legal profession and would be competent to handle the appeal. The defendant, in my opinion, is not competent to handle his own appeal effectively.

THE DEFENDANT LUCCHETTI: Your Honor, Mr. Boitel is on the list in the panel of the Court of Appeals. He prosecuted the first appeal on the very same bank robbery and he is familiar with the case and I would ask the Court to appoint Mr. Boitel to prosecute these proceedings.

THE COURT: I have no power to do that. I suggest you write to the Clerk of the Court of Appeals and he can take it up with the Court. All I can do is file this form A6-73 in the Court of Appeals indicating that you have been committed. The Court Clerk will fill in the sentence. Are you without any funds at present?

THE DEFENDANT LUCCHETTI: Yes, your Honor.

THE COURT: I will however add that defendant requests appointment of Mr. Henry Boitel.

THE DEFENDANT LUCCHETTI: I would like to also request that I be furnished with the minutes of the proceedings of three dates, 3/12/75, 4/11/75 and 4/18/75 to --

THE COURT: Haven't they been furnished?

MR. LASHLEY: Those three have not.

MS. O'BRIEN: I don't have them. They are various bail hearings.

THE COURT: All right. Order them from the Reporter and send them to the defendant.

THE DEFENDANT LUCCHETTI: Also may I have copies of the jurors' notes that were sent out.

THE COURT: They are in the file.

Will the Clerk Xerox them and mail them to the defendant.

THE DEFENDANT LUCCHETTI: I also make an application, if the Court would order a restraining order so that I could stay at West Street to help assist prepare the appeal.

THE COURT: Denied. You wil have to apply to the Court of Appeals for that. In my opinion there is no substantial basis for an appeal here. The appeal is solely for the purpose of delay and there is no reason why you should not be in a maximum security institution.

THE DEFENDANT LUCCHETTI: At this time I would like to file with the Court a motion pursuant to Rule 35. A copy served on the Assistant United States Attorney.

(After the Court read the papers)

THE COURT: The motion is denied. The Court Clerk will file the motion papers.

Anything further?

THE DEFENDANT LUCCHETTI: No, your Honor -- May I have a visit with my wife?

THE COURT: Yes, the marshals will allow a visit with the defendant's wife and then arrange to transport him to a maximum security institution as soon as possible.

Thank you gentlemen and madam

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I certify that the preceding stenotype notes are true and accurate transcription of the proceedings contained therein.

Official Court Reporter
U.S. District Court

UNITED STATES DISTRICT COURT
DISTRICT OF NEW YORK
EASTERN DISTRICT OF NEW YORK

---------- X

UNITED STATES OF AMERICA

-V-

CRIMINAL NOS. 71CR849
75CR25
75CR288

CHARLES LUCCHETTI

---------- X

"MOTION FOR A DIRECTED VERDICT"

AND/OR

"DISMISSAL OF INDICTMENT"

TO THE HONORABLE JACOB MISHLER, UNITED STATES DISTRICT JUDGE, U.S.D.C., FOR THE DISTRICT OF NEW YORK, EASTERN DISTRICT OF NEW YORK, N.Y.C., N.Y.

Comes now, Charles Lucchetti Defendant in the above stated action/cause, after being duly sworn, according to law, deposes and says:

Defendant herein moves for the dismissal of the indictment upon the ground that the Goverment has failed to establish Prima Facie Jurisdiction and therefore this court lacks authority to proceed further against defendant pursuant to 18,U.S.C. Sec. 2113 A thru F.

"FACTS"

Your Movant will rely on the following facts: "Title 28, U.S.C. Sec. 1349"

"The District Court shall not have Jurisdiction of any civil action by or against any corporation upon the grounds that it was incorporated by or under an Act of Congress, unless the United States is the owner of more than one-half (½) of its Capitol stock.

1. Cond't

The Federal Deposit Insurance Corporation was created as a corporation by a congressional Act in 1933 and went into effect on January 1, 1934.

In 1950 it was withdrawn as a part of the Federal Reserve Act and made a seperate Law known as the Federal Deposit Insurance Act.

The purpose of the original F.D.I.C. Act was to promote soundness in Banking nd to aid the U.S. Government in discharge of its fiscal transactions.

"Quoting" from the U.S. Government orginization manual 1970/1971: "The Corporation was established to promote and preserve Public confidence in Banks and to protect the money supply through provisions of insurance coverage for deposits".

The Corporation (F.D.I.C.) initial capital was supplied in the form of non-voting stock. $150 Million Dollars from the United States Treasury, $139 Million Dollars by the Federal Reserve Bank.

The Legislative history of "Title 18 U.S.C. Section 2113 A Thru F. dates back to 1934 and this Section 2113, A thru F was enacted by Congress to protect the United States Governments investment in F.D.I.C..

The Necessary elements and constitutional requirements were present to establish or enact a valid Federal Statute, i.e., "Title 18 A Thru F., and thus create a valid cause for Federal Jurisdiction in the matter of Bank Robbery where said Bank deposits were insured by F.D.I.C. The Necessary eliments for establishing Federal Jurisdiction is ownership, proprietorship or proprierutability. In the case at hand this being accomplished by the virtue of the Government to the F.D.I.C..

Up to this point the Congress had a valid Constitutional reason to enact and enforce the Criminal Statute, Title 18 U.S.C. Supra, and to protect the United States Governments investment and to allow the Government to sue for and defend the F.D.I.C. in Criminal Matters. However today and for the past several years, the United States Government has not had and financial interest in F.D.I.C.

"ADDITIONAL RELEVANT FACTS"

Cond't

"In 1947-1948 the F.[redacted]D.I.C. retired the capital stock owed by the United States Government".

"In 1950-1951 the F.[redacted]D.I.C. paid back a current interest rates to the United States Gover[redacted]ment, on the initial loan, the amount of $81 Million Dollars".

From this point the [redacted]nited States Government has lost its legal and constitutional right[redacted] to prosecute on charges under "Title 18 U.S.C. Sec. 2113 A. thru F.

From a legal or Gov[redacted]rnment Standpoint there is no difference today between a member Bank of F.[redacted]D.I.C. and a non member. The Government is not involved with either to the [redacted]ent that the necessary elements are not present to validate the reason [redacted] cause for federal Statute intervention and/or Jurisdiction... The [redacted]overnment does not, have ownership, proprietorship or proprietorbility in [redacted]e F.D.I.C.. This brings us back to "Title 28 U.S.C. Section 1349" as st[redacted]ed in the outset of this motion.

There is no differe[redacted] in establishing Federal Jurisdiction whether it be Civil or Criminal. [redacted]e must be a valid cause for Government intervention whether to sue or d[redacted]end in civil matters or to prosecute in criminal matters.

Your Defendant-Movan[redacted] contends that the Government has no standing as an interseted or invol[redacted] party in the F.D.I.C. or to prosecute him under "Title18 U.S.C. Supra [redacted] to hold him in a Federal Prison.

The wording in the F.[redacted].I.C. that is used, implies that it is a Government agency and that by [redacted]olation of "Title 18 U.S.C. Supra, one has committed a crime against the Government... Such could not be further from the truth.

(A) The Government does not contribute any funds to the F.D.I.C. "FACT": F. D.I.C. admits this.

(B) The Government does not recieve any of F.D.I.C. earnings. So the specification of details of the offense charged two counts of this indictment found in the instant case against your Defendant-Movant cannot be used/tailord to violate a statute of congressianal Act that is contrary to the "That violates due process of law".

Cond't

The implication of "Title 18 U.S.C. Section 2113 in charging that robbery of the Banks as defined in indictments 71CR849 and 75CR25 and 75CR286, Thu deposits of which were then and there insured by the Federal Deposit Insurance Corporation is misleading in that it implies that the F.D.I.C. insures Banks and/or Bank against specific loses i.e., bad banking practice or from financial irregularties.

Private insurance companies insure the banks against robbery, thief, fire, flood etc.

Wherefore your movant moves the Court to subponea the F.D.I.C.'S leading representative in this area or his agent and, any relevant records/papers not otherwise available/public used by the F.D.I.C. in respect to specifically what the F.D.I.C. does insure banks against and to ascertain if the United States Government has any ownership, propietorship or proprietutability in the instant case. The Indictment to which defendant-movant is held to answer to alledges that the deposits of the said Banks Supra were "then insured by the F.D.I.C." From which jurisdiction appears to derive, making this said charge an offense against the United States under "Title 18U.S.C. Sections A thru F"., such a factual showing could anly be established by documentary proof in the form of the "Orginization Certificate" showing said Banks to be insured by F.D.I.C. as alledged in defendant-movants indictment, e.g., against robbery. As the orginazation Certificate goes to the factual basis of whether the offense in question was in the nature of a federal violation, thus, also being as issue of a jurisdictional nature.

Furthermore, in this instant case, defendant-movant respectfully submits that there is another serious lack of factual basis involved which challenges this courts jurisdiction going into the Bank robbery charge itself.

The indictment which defendant-movant is held to answer aledges that the deposits of these said Banks Supra were "then insured by F.D.I.C." the term "Bank" as applied in 2113 (a) is defined in sub-section (f) of 2113, to include/means any member bank of the Federal Reserve System, and any Bank, Banking association, trust company, savings bank, or other banking institution organization/organozed or operating under the laws of the United States, and

Cond't

any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

Again, the indictments in Defendant-movants case "F.D.I.C." is the definition from which Jurisdiction appears to derive, making the charges therein an offense against the United States, thus, an escential element of an offense under 2113 (f). KING -V- UNITED STATES, 426 F. 2d 278 (1970).

Since the applicability of 2113 (a) depends upon sub section (f) to show a Federal violation of statute, without such a showing this court lacked Jurisdiction to accept defendant-movants plea.

Premises considered upon this Courts perusal of the said organization Certificate and, other relevant/material documents and, upon hearing all the testimony of necessary witnesses this court can determain whether the Court has Jurisdiction to proceed with any further action in defendant-movants case.

"CONCLUSION"

Wherefore, Defendant-Movant prays that this Honorable and Esteemed Court issue an order for production of all necessary documents, papers, or whatever, including witnesses necessary to bestow/grant/give the Government Jurisdiction of said matter...

And, if the Government cannot prove/show competent Jurisdiction the Defendant-Movant moves said Court to enter an order directing a verdict of aquittal and/or in the alternative these indictments be quashed.

State OF NEW YORK (SS/
COUNTY OF NEW YORK)

RESPECTFULLY CONSTITUTIONALLY SUBMITTED

Charles Lucchetti

CHARLES LUCCHETTI
PRO-SE 427 WEST STREET
NEW YORK CITY, NEW YORK

Before Me the undersigned, personally appeared, Charles Lucchetti, Defendant-movant-Affiant herein, first being duly sworn, according to law, under oath, deposes and says: That all of the allegations/statements contained in this motion for a Directed Verdict and/or dismissal of indictment are true to the best of his knowledge, information and belief.

Charles Lucchetti

CHARLES LUCCHETTI-AFFIANT

Cond't

All of the alligations/statements etc. on page's (1) one thru (6) six of the motion herein and/or as beford stated.

JULY 7, 1955
U.S.C. 4004)".

SWORN AND SCRIBED TO BEFORE ME

THIS 30 DAY OF ~~MAY~~ April, 1975

RESPECTFULLY CONSTITUTIONALLY SUBMITTED

Charles Lucchetti
CHARLES LUCCHETTI
PRO-SE

Joseph J. Norton
WITNESS

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the within motion, placed in a sealed envelope, was mailed through the United States Mails, at the U.S. Federal Dention Headquarters; 427 West St. , New York, New York, to each of the following:

ONE ORIGNAL & THREE COPIES:

CLERK OF THE COURT OF [redacted]
EASTERN DISTRICT OF NEW YORK
225 Cadman Plaza
Brooklyn, N.Y.

ONE COPY

UNITED STATES ATTORNEY
EASTERN DISTRICE OF NEW YORK
225 Cadman Plaza
Brooklyn, N.Y.

DATED, April 30 1975

SIGNED Charles Lucchetti
CHARLES LUCCHETTI, PRO SE

United States of America vs.

United States District Court for EA. 'RN DISTRICT OF NEW YORK

DEFENDANT

CHARLES LUCCHETTI

M'FILMED

DOCKET NO. 71 CR 849

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH 5 DAY 23 YEAR 1975

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[XXX] WITH COUNSEL Allen Lashley, Esq. (Name of counsel)

FILED IN CLERK'S OFFICE U.S. DISTRICT COURT E.D.N.Y. MAY 23 1975 ★

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea. [ ] NOLO CONTENDERE. [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [ ] GUILTY

TIME A.M.....
P.M.....

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S.C. Sec. 2113(a)(371,2 in that on or about Dec. 21, 1970 and on or about and between Dec 1 and Dec. 21, 1970, both dates approximate and inclusive, the defenda wilfully and knowingly conspired to commit offenses against the U.S. and the defendant did knowingly, wilfully and feloniously by force, violence, and intimidation tkae sums of money from the First National Bank of Bayshore, which money was in the care custody, control and management of the said bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, and in the commission of this act and offense the defendant assaulted and placed i jeopardy the lives of the said bank employeees, by the use of a dangerc weapon.

SENTENCE OR PROBATION ORDER

The defendant was asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 20 years on count 2 pursuant to T-18, U.S.C. Sec. 4208(a)(2) and fined $10,000.0 and 5 years as to count 3 pursuant T-18, U.S.C. Sec. 4208(a)(2) to run concurrently with prison sentence in count 2 and fined $5,000.00 to run consecutively with count 2 for a total fine of $15,000.00. Count I is a lesser crime included within count 2. Credit to be given for time already served

M'FILMED

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends, The defendant is an extremely dangerous criminal and should be kept incarcerated until there is assurance that the public will not be endangered by his release

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qual...ed officer.

SIGNED BY

[ ] U.S. District Judge

[ ] U.S. Magistrate

Jack B. Weinstein

Date May 23, 1975

A 323

52

FILED
CLERK'S OFFICE
DISTRICT COURT E.D. N.Y.
MAY 23 1975
P.M.

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA - vs - CHARLES LUCCHETTI	NOTICE OF APPEAL File No: 71 CR 849

Notice is hereby given, that the defendant, Charles Lucchetti, hereby appeals in forma pauperis, to the United State Court of Appeals for the Second Circuit, from the final judgement entered in this proceeding on the 23rd day of May, 1975

Dated: Brooklyn, New York

May 23, 1975

Charles Lucchetti

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
BROOKLYN, NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
MAY 23 1975
TIME A.M.
P.M.

UNITED STATES OF AMERICA
RESPONDENT

V

CRIMINAL NO. 71 CR. 849

CHARLES LUCCHETTI
DEFENDANT

NOTICE OF MOTION

MOTION TO CORRECT AN ILLEGAL SENTENCE PURSUANT TO RULE (35) FED. RULES OF CRIM. PROC.

COMES NOW, Charles Lucchetti, first being duly sworn, according to law, under oath, deposes and says:

That, this said Court abused its discretion in denying defendants motion for a new trial on/about 5/23/75.

(2) That the integrity of the fact finding process was flouted thru-out the proceedings of this trial/trials of the instant case.

(3)That this said Court should have ordered the prosecution to answer defendants questions each/all.

(4) That this said Court and/or Courts refused to entertain witnesses of the highest unimpeachable character to be located, and to render oral testimony before this Bar

(5) That the Prosecution of this cause obtained Defendants conviction and/or sentence thru/by lawlesslaw enforcement.

(6) That the prosecution lied and/or gave false testimony before the bar of this Honorable Court.

Cond't

(53)

And hence Defendant moves this said Court to order a full evidentiary hearing be afforded unto him and counsel be appointed to persue and pro secute this action, whereas defendant is a Pauper.

Herein/aforementioned Sworn and Scribed to under the Rules/Laws of Purjury, Under Oath, being Duly Sworn afferm and affix my sibniture thereto:

SS/ Charles Lucchetti
CHARLES LUCCHETTI PRO-SE

HAND SUBMITTED TO THE UNITED STATES DISTRICT COURT 5/23/75.

EXHIBIT 1

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
MAY 28 1975
TIME A.M.
P.M.

Re: 71-CR-849
Charles Lucchetti
427 West Street
New York, New York

May 24, 1975

Honorable Judge Weinstein
225 Cadman Plaza East
Brooklyn, New York

Dear Sir;

Please accept this letter as a formal application for an extention of time to file motions pursuant to rule 29 and rule 34 of the federal rules of criminal procedure, The rules require that the motion be filed with in seven days. I'm asking for an extention of thirty days. This time is necessary to secure documents and materials to properly prepair and file the aforesaid motions. Due to my present incarceration, it is virtuely impossible for me to properly prepair this motion without this additional time.

Thanking you in advance to what ever assistance you may render in this matter, I remain, as always,

Most respectfully,

Charles Lucchetti
CHARLES LUCCHETTI

cc: Ms. Joan O'Brian, Asst. U.S. Atty.
225 Cadman Plaza East
Brooklyn, New York

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
MAY 28 1975
TIME A.M.
P.M.

Motion for an extension of time is granted. The Clerk of the Court will send a copy of this order to Counsel and to the Defendant Pro se.

Jack B. Weinstein

May 27, 1975

FILED
JUN 20 1975
TIME AM PM

Jan 12 1975

Charles Lucchetti
9 Cherry Lane
Levittown Pa

Dear Mr Lucchetti

I am in receipt of your letter of [illegible]

In as much as you have not made payment of the $[illegible] fee as required by the Court's Order of August [illegible] 1974 directing the same to be paid by thirty days from the date of the Order the Defendant was compelled to file a motion to dismiss your complaint. If you wish to continue your suit you must file the legal papers and have the fee paid by the authorized date.

The Defendant is prepared to proceed with the case as soon as the fee is paid. Should you not wish to continue your suit please advise the Court within thirty days.

Thank you for your time and consideration.

Very truly yours

Charles Lucchetti

R 328

EXHIBIT 2

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JUN 20 1975 ★
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- : ORDER

CHARLES LUCCHETTI, : 71-CR-849

Defendant. :

- X

Defendant seeks an extension of time to file a motion pursuant to Federal Rules of Criminal Procedure 29 and 34 for the reason that his material was misplaced while he was being moved from one place of incarceration to another. To the extent that the court has power to grant such a motion, it is hereby granted.

The Clerk of the Court shall send a copy of this Order to the defendant and to the United States Attorney.

So ordered.

Dated: Brooklyn, New York
June 19, 1975

United States District Judge

Charles Lucchetti # 72988
U.S.Penitentiary
Lewisburg, Pennsylvania
Post Office Box, 1000 17837

Honorable Judge J.C.Weinstein
United States District Court
Eastern District Of New York
225 Cadman Plaza (East)
Brooklyn, New York. 11201

FILED
U.S. DISTRICT COURT E.D.N.Y.
JUL 29 1975
TIME A.M. P.M.

July 30, 1975

Re: U.S. vs- Lucchetti, C
71 - CR - 849

Dear Judge Weinstein:

Please accept this letter as a formal application, requesting that you order the United States Attorney to furnish me with the following, so that I can properly prepare and submit my motion pursuant to Rule 29 and Rule 34, of the Federal Rules and Criminal Procedures.

(1) Transcript of David Williams, Grand Jury Testimony on May 1971, before the Grand Jury in Suffolk County, New York. A request was made at the time of my trial to be furnished with this document at which time the Court signed a Subpoena directing that it so be produced. However, it was never produced for my trial.

(2) A copy of all statements made before the Grand Juries in the above captioned matter and, also that of the Grand Jury that presided on October 19, 1972, said statements of Mr. Manny Moore assistance United States Attorney whom had handeled the above mentioned proceedings. The said request is baised on personal knowledge that, Mr. Manny Moore made statements before the Grand Jury of October 19, 1972.

(3) Copies of the pictures presented as evidence before the Grand Jury On July 22nd, 1971, and not turned over as part of the 35 Hundred Material.

(4) That I also be furnished with copies of the following transcript's; U.S.A. vs- C.Lucchetti, (71 - CR - 849). January 3rd,1975, January 9th, 1975, January 15th, 1975, and April 3rd, 1975.

Thanking you in advance for whatever assistance you may render in this matter. I remain,

Most Respectfully
Charles Lucchetti
Charles Lucchetti # 72988-158

cc; John O'Brien Esq.
Assistant U.S.Attorney

FILED 71CR849
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
JUL 29 1975
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - -X

UNITED STATES OF AMERICA :

-against- : MEMORANDUM AND ORDER

CHARLES LUCCHETTI :

- - - - - - - - - - - - - - - - - -X

A P P E A R A N C E S:

Charles Lucchetti

Alan Lashley, Esq.
16 Court Street
Brooklyn, New York 11201

Honorable David G. Trager
United States Attorney
225 Cadman Plaza East
Brooklyn, New York 11201
Joan O'Brian, Esq.
Assistant U. S. Attorney
Of Counsel

WEINSTEIN, D.J.

The court has a letter dated June 30, 1975 from Charles Lucchetti requesting the United States Attorney to furnish certain material. The United States Attorney is requested to respond to this motion in writing within thirty days.

The Clerk of the Court shall send a copy of this Memorandum and Order to Charles Lucchetti, to his counsel at the trial and on the appeal. A copy of his letter shall be sent to all of the above except Mr. Lucchetti.

So ordered.

Dated: Westbury, New York
July 28, 1975

U.S.D.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA

-AGAINST-

CHARLES LUCCHETTI,
DEFENDANT

----------X

NOTICE OF MOTION
No. 71-CR-849

PLEASE TAKE NOTICE:

That the defendant, Charles Lucchetti, will move this court Pro se. on the 11 day of Aug, 1975, at 10:00 o'clock in the forenoon thereof, or as soon thereafter as he may be heard pursuant to Rules 29 and 34 of the Federal Rules of Criminal Procedure before the Honorable Jack B. Weinstein, D.J. in the United States District Court for the Eastern District of New York, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, for an order arrest of judgment on the grounds set forth in the annexed motion of Charles Lucchetti, Defendant, Pro se, being duly sworn.

Yours, etc.

Dated July 24, 1975

Charles Lucchetti
CHARLES LUCCHETTI

DEFENDANT, Pro se
P.O. Box 1000
Lewisburg, Pa.
17837

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA

-AGAINST-

INDICTMENT No. 71-CR-849

CHARLES LUCCHETTI,
DEFENDANT

----------X

Preliminary Statement

Charles Lucchetti submits this motion for judgment of acquittal notwithstanding the verdict and judgment entered on May 23, 1975, after a trial before the Honorable Jack B. Weinstein, D.J., and a jury in the United States District Court for the Eastern District of New York.

The defendant stands convicted of aiding and abetting the use of a dangerous weapon in the perpetration of a bank robbery (18 U.S.C. Sec 2 & 2113 (a)(d)), and conspiracy to do the same (18 U.S.C. Sec 371). As to the substantive count, the Court imposed a sentence of imprisonment of twenty years and fine of $10,000.00; as to the conspiracy the Court imposed a sentence of five years imprisonment and a fine of $5,000.00. The prison terms were made to run concurrently; the fines totaled $15,000.00.*

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* References to the Defendant's exhibits are preceded by an L

QUESTIONS PRESENTED FOR REVIEW

1. The Government's Failure to Prove Jurisdiction 5, 6

2. Double Jeopardy Question 7, 8

3. Defendant was Tried on Illegal Document 9

4. Suppression of 3500 Material 10, 11, 12, 13

5. Illegaly Obtained Evidence 14, 15

Statement of Facts

On December 21, 1970, a car drove up to the community branch of the First National Bank of Bayshore, in Bayshore, Long Island, and two persons wearing ski masks entered the bank. One of them exhibited a gun. They directed the bank personnel and customers to lie on the floor, and then hurriedly commenced a search of the premises for money. They exited the bank with a total of $25,107.72.

Some five months later, May 13, 1971, David Williams and Jack Dempsey were apprehended during an alleged attempted robbery of the same bank (E.1) it is to be noted that Williams was working as an undercover agent for the Suffolk County Police Department and the Suffolk County District Attorney Office, prior and subsequent to his arrest on May 13, 1971.

It is alleged on May 19, 1971, that Williams confessed to the December 21st robbery and implicated the defendant in that robbery.

On June 15, 1971, an indictment was filed charging the defendant, Williams, and one Dempsey with the December 21, 1970 bank robbery and with conspiracy* (E.2). The defendant was arrained on June16,1971, and bail was set at $75,000. Williams was arraigned on July 12, 1971, and upon application of the government was released on O.R.. Dempsey was arraigned on July 8, 1971 and bail was set at $5,000.

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* During the week of trial in August 1971, one of the defendant's witnesses Matthew Santoro, was arrested on a complaint charging him with aiding and abetting the bank robbery. (E.3) Upon a motion by the United States Attorney filed on March 24, 1972, the complaint was dismissed.

On July 21, 1971, there was filed a superseding indictment, identical to the original indictment. (E.4)

On August 2, 1971, upon a motion by the United States Attorney, the case against Williams and Dempsey was severed, and the trial commenced on the defendant. Williams and Dempsey testified as government witnesses, and both implicated the defendant.

On August 5, 1971, the jury returned its verdict, convicting the defendant of the substantive offense, Count II and the conspiracy Count III.

The indictment had been in three counts. CountII charged bank robbery with the use of a dangerous weapon (18 U.S.C. Sec 2113 (d)). Count III charged the conspiracy (18 U.S.C. Sec 371). The substantive charge, CountI, charged bank robbery by force and violence (18 U.S.C. Sec. 2113 (a)). The Court charged the jury that they should first consider Count II, and if they found the elements of that offensive charged in that count to have been established, then they were not to consider Count I. After some confusion, the jury rendered its verdict convicting the defendant of Count II and Count III. (E.4)

On October 15, 1971 the defendant was sentenced, on the substantive Count, and the Court imposed a sentence of imprisonment of twenty years and a fine of $10,000; as to the conspiracy, the court imposed a sentence of five years imprisonment and a fine of $5,000. The prison terms were made to run concurrently; the fines totaled $15,000. Upon a motion by the United States Attorney, indictment No. 71-CR-662 was dismissed. (E.5)

On October 27, 1971, Williams plead guilty to Count III conspiracy, on January 7, 1972, he was sentenced to five years probation. On October [illegible], 1971 Dempsey plead guilty to Count III conspiracy, and on January 7, 1972 he was sentenced to five years imprisonment under 18 U.S.C. Sec 4208 (a) 2.

On June 12, 1972, the United States Court of Appeals for the Second Circuit affirmed the defendant's conviction.

On November 6, 1972, the Supreme Court of the United States denied the defendant application for certiorari.

On May 27, 1973, June 11, 1973, June 19, 1973, September 6, 1973, October 24, 1973, the defendants applications to be furnished with "3500" material were submitted. All were denied, upon the "LIED" of the Assistant United States Attorney, Mr. Moore. (E.8)

On July 24, 1974 the defendant filed an application under 28 U.S.C. Sec. 2255. A hearing was ordered and held on October 29, 1974, November 1, 1974 and November 4, 1974 on this matter. On December 16, 1974, the Court filed memorandum of decision and order, vacating the judgment of October 15, 1971 and ordered a new trial.

On May 12, 1975, the retrial commenced before the Honorable Jacob Mishler, D.J. on indictment No. 71-CR-849, Counts I, II, and III. The government's witnesses were:

1. Frederick Badenious - the bank auditor
2. Michael Golden - the bank manager
3. John Sable - the bank supply clerk and messenger
4. David Williams

The retrial continued on May 13, 1975 and the governments witnesses were:

1. David Williams
2. Elizabeth Ann Ng - court reporter
3. Daniel W. Long

On a statement made by the Assistant United States Attorney to the jury that the defendant was convicted, the court thought (TT pg. 340) it was serious error and declared a mistrial.

On May 20, 1975, a third trial was commenced before the Honorable Jack B. Weinstein.

The Government's witnesses were:

1. Frederick Badenious - the bank auditor
2. Elizabeth Ann Ng - grand jury reporter
3. David Giersch - bank teller
4. John Sable - bank supply clerk
5. Jack Dempsey -
6. Daniel W. Long - F.B.I. agent
7. Grand Jury Minutes

The Defense witnesses were:

1. Michael Golden - testimony of May 12 read
2. Emanuel Moore - Asst. U.S. Attorney
3. Bedrich Phillips - testimony of August 1971 read
4. Simon Chrein - Dempsey attorney
5. Donald Wiebke - F.B.I. agent
6. David Williams
7. Joan Miller - testimony of August 1971 read

The trial concluded with a verdict of guilty on May 22, 1975 on counts I, II, and III.

ARGUMENT

THE GOVERNMENT'S FAILURE TO PROVE JURISDICTION DENIED THE DEFENDANT DUE PROCESS AS GUARANTEED BY THE FIFTH AMENDMENT

The government failed to prove that the First National Bank of Bayshore was insured by the Federal Deposit Insurance Corporation, on December 21, 1970, or that the money that was taken on December 21, 1970 was insured by the Federal Deposit Insurance Corporation as charged in the indictment:

> "...Charles Lucchetti, did knowingly, wilfully and feloniously, by force, violence, and intimidation take approximately Twenty Five Thousand Dollars ($25,000.00) in United States Currency from the persons and presence of employees of the First National Bank of Bayshore, Community Branch, 340 Howells Road, Bayshore, New York, which money was in the care, custody, control, management and possession of the said First National Bank of Bayshore, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation."

Government witness Frederick Badenious, Auditor for the First National Bank of Bayshore, TT pg 106:

Q. I show you a blank and ask you if you can identify this certificate?

TT pg 107

A. Yes, that is the Federal Deposit Insurance Corporation insurance certificate.

Q. Was that certificate hanging on the wall of the First National Bank of Bayshore on December 21, 1970?

A. Yes.

Q. Was that certificate valid on September 21, 1970?

A. To the best of my knowledge it was.

TT pg. 119

Q. The question is, the money lost from the First National Bank of Bayshore on December 21, 1970, were those funds reimbursed to the bank through the Federal Deposit Insurance Corporation?

TT pg. 120

A. No.

Q. Would you please tell the Court who reimbursed

the bank for the loss?

A. Banks have blanket coverage bond by private insurance companys.

Q. The proceeds that were allegedly taken from that robbery were not insured by the Federal Deposit Insurance Corporation?

Q. The proceeds——

Miss O'Brien: Objection Your Honor.

The Court: I will permitt it.

A. The proceeds were monies that were deposited by customers but that does not come under the Federal Deposit Insurance Corporation as far as they are paying insurance.

Q. The Federal Deposit Insurance Corporation didn't reimburse the bank for that?

A. No.

Q. What is the name of the company that reimbursed the bank?

A. I believe it was Hartford Indemnity.

The defendant submits that the Government failed to prove that the bank was Federal Deposit Insured on December 21, 1970, as charged in the indictment or that the money taken in that robbery was then and there insured by the Federal Deposit Insurance Corporation.

Therefore, the Government was without jurisdiction, and the indictment should dismiss in all respects.

POINT TWO

THE DEFENDANT WAS DENIED DUE PROCESS OF LAW IN VIOLATION OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION WHEN HE WAS PUT IN JEOPARDY TWICE FOR THE SAME OFFENSES.

A) On May 19, 1971, a warrant for the defendant was issued.

B) On June 15, 1971, the grand jury returned an indictment against him 71-CR-662

C) On July 20, 1971, there was filed a superseding indictment identical to the original indictment 71-CR-849

D) On August 2, 1971, the defendant was tried before the Honorable Jacob Mishler and a jury, on August 5, 1971, returned a verdict of guilty on Count II and III on indictment No. 71-CR-849

E) On October 15, 1971, the defendant was sentenced. On a motion by the Government indictment No. 71-CR-662 was dismissed.

F) On December 16, 1974, the verdict of August 5, 1971, and a judgement of October 15, 1971, were set aside and a memorandum and order by the Honorable Jacob Mishler was issued and a new trial ordered.

G) On May 12 and 13, 1975, the defendant was tried for a second time for the same offenses, before the Honorable Jacob Mishler and a jury. This trial ended when Judge Mishler declared a mistrial based on a statement made by the Assistant U.S. Attorney to the jury, that the defendant Charles Lacobetti was convicted.

H) On May 20, 1975, the defendant was tried for the third time for the same offenses before the Honorable Jack B. Weinstein. This trial concluded with a verdict of guilty on May 22, 1975, on Counts I, II, and III.

This trial was in violation of the double jeopardy clause of the fifth amendment of the United States Constitution.

Defendant further submits that the government put him in jeopardy twice on Count I when in fact on the Government's motion, the crimes in Count I were dismissed against the defendant.

Sentence Minutes of October 15, 1971:

page 8

Mr. Moore: Your Honor, there is an indictment open and at this time in view of the

sentence on indictment No. 71-CR-849 the Government moves to dismiss the indictment.

The Court: Is that an unrelated crime?

Mr. Moore: No, its the same crime.

The Court: Same crime.

Mr. Moore: Number 71-CR-662 against the defendant Charles Lucchetti.

The Court: Motion granted.

Indictment No. 71-CR-662

The Grand Jury Charges:

COUNT I

On or about the 21 day of December, within the Eastern District of New York, the defendant David Williams, the defendant Jack Dempsey, and the defendant Charles Lucchetti did knowingly, wilfully, and feloniously by force, violence, and intimidation take approximately Twenty Five Thousand Dollars ($25,000.00) in United States Currency from the persons and presence of the employees of the First National Bank of Bayshore, Community Branch, 340 Howells Rd., Bayshore, New York, which money was in the care and custody, the control, management, and possession of the said First National Bank of Bayshore, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation. (Title 18 United States Code, Section 2113 (a) Title 18 United States Code, Section 2.)

The defendant submits that being tried on count I was in violation of the double jeopardy clause of the fifth amendment ofthe United States Constitution.

POINT THREE

THE DEFENDANT WAS DENIED DUE PROCESS OF LAW WHEN HE WAS TRIED ON AN ILLEGAL AND UNCONSTITUTIONAL INDICTMENT

The indictment was founded on faulty evidence and perjured testimony of agent Donald B. Wiebke before the grand jury on June 15, 1971.

Page 3

Q. Related to the fact concerning this particular bank robbery, was another bank robbed May 13, 1971?

A. Yes sir.

Q. At that time were you advised who robbed the bank on that particular day when they were apprehended by the Suffolk County Police Department?

A. Yes sir, they were apprehended at the same bank, the First National Bank of Bayshore.

Q. Were these individuals, David Williams, Jack Dempsey, and Charles Lucchetti, is that correct?

A. Yes sir.

Page 4 (line 11 and 12)

Q. That was the same bank they were apprehended at?

A. Yes . . .

The defendant has never been indicted nor was he apprehended at the First National Bank of Bayshore for the robbery on May 13, 1971. From reading the grand jury testimony of Donald B. Wiebke the defendant does not know if he was indicted for robbing the First National Bank of Bayshore on May 13, 1971 or December 21, 1971. This testimony is so tainted, the said indictment, so as to make prosecution illegal and an adequate defense impossible. It is obvious no true bill can be handed down, if the grand jury hearing such evidence is unaware of its perjured nature.

POINT FOUR

THE DEFENDANT WAS DENIED A FAIR TRIAL BY THE GOVERNMENT CONTINUING TO SUPRESS 3500 MATERIAL AS HAS BEEN THEIR CONTINUING PRAC-TICE.

The defendant submitted the chronological sequence of events commencing with Judge Mishler sua sponte ordered the Government to produce all material relevant under Title 18 U.S.C. Section 3500 at the first trial August 2, 1971.

1) On August 2, 3, 4, 1971, at the defendant's first trial on indictment 71-CR-849 Judge Mishler ordered the Government to turn over all 3500 material of Government witnesses Jack Dempsey and David Williams. The Government purported to comply with this order by turning over to the defendant the following:

Government witness;	Jack Dempsey, exhibits 20 & 21
3500-20	Grand jury minutes of July 20, 1971
3500-21	Statement given on July 26, 1971
Government witness;	David Williams, exhibits 23, 24, 25 also 22
3500-22	Statement given on May 18, 1971
3500-23	F.B.I. 302 of May 18, 1971
3500-24	F.B.I. 302 of July 12, 1971
3500-25	F.B.I. 302 of July 13, 1971

2) On October 15, 1971, prior to sentencing, the defendant acting pro se, moved the court to strike from the record the testimony of Jack Dempsey and David Williams on the grounds that the Government had failed to comply with the instructions of the trial judge in that the Government had not turned over statements given by Dempsey and Williams on May 13, 1971. At that time the Asst. U.S. Attorney chose to protect his conviction and deliberately lied to the court and Judge Mishler in particular, stating that those statements were turned over, on the Government assurences Judge Mishler denied the motion out of hand.

3) On appeal the defendant argued that the Court erred in not granting an evidentiary hearing. The Government deliberately and willfully lied and misled the Second Circuit Court of Appeals by stating that the defendant was furnished with all the 3500 material in the instant case and that there were no statements made by Dempsey or Williams on May 13, 1971.

4) The defendant had made numerous motions to Judge Mishler for a period of almost four years to be furnished with the 3500 material suppressed at the first trial, all to no avail. It is to be noted a letter sent to the Judge Mishler as late as September 20, 1973, by the Asst. U.S. Attorney Emanuel Moore, stating that "The allegation by Luschetti that such statements were made by Dempsey and Williams on May 13, 1971, is completely false."

5) Now the defendant will list the 3500 material furnished him on the retrial of May 12, 13, 1975:

Government Witness Jack Dempsey

3500-16	Grand jury testimony on July 20, 1971	
3500-17	arrest report of Dempsey	
3500-18	Statement on May 13, 1971	(emphasis added)
3500-19	Statement on May 13, 1971	(emphasis added)
3500-20	Statement on May 13, 1971	(emphasis added)
3500-21	Statement on May 13, 1971	(emphasis added)
3500-22	Statement on May 13, 1971	(emphasis added)
3500-23	Statement on July 25, 1971	
3500-24	Statement on August 9, 1971	

Government Witness David Williams

3500-7	Grand jury testimony on June 15, 1971	
3500-8	arrest report of Williams	
3500-9	Statement on May 18, 1971	
3500-10	Statement on May 18, 1971	
3500-11	Statement on July 12, 1971	
3500-12	Statement on July 13, 1971	
3500-13	Statement on May 13, 1971	(emphasis added)
3500-14	Statement on May 13, 1971	(emphasis added)
3500-15	Statement on May 13, 1971	(emphasis added)

The statements that the Government claims never existed furnished by the Government at the second trial as 3500 material thus contradicting their previous statements made over a period of four years. The defendant submits, based on the gross prosecutorial misconduct and illegal activities involved in this case for years, by the suppression of Brady material (May 13, 1971 statements of David Williams and Jack Dempsey) and Jencks Act material has so prejudiced the case against the defendant as to have a fair trial impossible.

The defendant has lost two defense witnesses that had testified at his first trial on August 1971, Mr. Matthew Santoro and Mrs. Barbara Lucchetti, they had refused to testify in the instant trial and informed the defendant if called they would take the fifth amendment.

The defendant further submits that the Government has not as of this date mended its illegal methods and continues its attempted stand to protect it's illegal conviction by these very same methods, the lies of the prosecutor, and the perjured testimony on the ex-prosecutor Emanuel Moore. The suppressed material are as follows:

1. Mr. Moore's notes, memorandums, and letters relevant to the instant case, and statements made by him to the grand jurys.

2. Statements made by David Williams to the Suffolk County Grand Jury on May 17, 1971.

Is the Court going to rest on the lies of the Asst. U.S. Attorney Mr. Moore that he handled this case for four years without making a single note, document, letter, or memorandum? (emphasis added)

POINT FIVE

THE DEFENDANT WAS DENIED A FAIR TRIAL BY THE GOVERNMENT'S USE OF ILLEGALY OBTAINED EVIDENCE: A GUN AND U.S. MAIL BAG.

A) On May 13, 1971 David Williams and Jack Dempsey were apprehended by the Suffolk County Police Department and charged with attempted robbery of the First National Bank of Bayshore (The same bank that the defendant was tried for, before Your Honor on May 20, 1975). Seized from Dempsey and Williams on the attempted robbery was a 38 caliber pistol and a U.S. mail bag, the same that were introduced into evidence at the trial before Your Honor.

B) Alleged after their arrest, Dempsey and Williams co-operated fully with agents and admitted their involvement in the earlier robbery of the same bank on December 20, 1970, and they implicated the defendant. The defendant points out that he was arrested on May 13, 1971, an hour after the alleged attempt based solely on the statement of Dempsey and Williams.

The defendant submits that he is now in the possession of documented proof that the attempted robbery on May 13, 1971 was staged by the Suffolk County Police Department and the District Attorneys Office using David Williams as a means to ensure the entrapment of the defendant.

The illegal evidence submited at the trial of the defendant was obtained illegaly by the Suffolk County Police Department on May 13, 1971. As in Elkin v. U.S. 364 U.S. 206, use of evidence obtained in an illegal manner was condemned was also prohibited by Federal Courts. In U.S. v Clemmons 503 F2d 484 (8th Cir. 1974) the Court layed out four points that must be met by a Federal District Court before State seized evidence is admitted. In Navarro v. U.S. 400 F2d 315, at 319, the Federal Court must hold an independant evidentiary hearing out of sight and sound of the trial jury.

All of the above were in violation of the defendants right to due process under the fifth amendment of the United States Constitution.

Furthermore, based on the fact that the defendant is unlearned in the Law, he requests that the record note his continual objection to all proceedings as being illegal and unconstitutional.

The defendant submits, as in Price v. Johnson, 330 U.S. 266 that prisoners are often unlearned in law and unfamiliar with complicated rules and pleading. Since they often act as their own counsel with complicated rules and pleading we cannot impose on them the same standards of legal art, as in a case like this, where impositions of those standards would have a retracted and prejudical effect on the petitioner.

CONCLUSION

For all the above reasons, the judgment of aquittal should be granted. In the alternative, the case should be remanded for a full evidentiary hearing, giving the defendant an opportunity to present papers in support of his contentions and oral argument.

Respectfully submitted,

Dated July 24, 1975

Charles Lucchetti
Defendant, pro se
P.O. Box 1000
Lewisburg, Pa. 17837

7/29/75

Parole Officer-Authorized by Act of July 7, 1955, to administer oaths (18 U.S.C. 40041)

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the within Motion, placed in a sealed envelope, was mailed through the United States mails, at the U.S. Penitentiary Lewisburg Pennsylvania to each of the followday:

ONE ORIGINAL AND ONE COPY
CLERK OF THE COURT
EASTERN DISTRICT OF NEW YORK
225 CADMAN PLAZA EAST
BROOKLYN, NEW YORK

ONE COPY:

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
225 CADMAN PLAZA EAST
BROOKLYN, NEW YORK

HONORABLE JACK B. WEINSTEIN
UNITED STATES DISTRICT COURT JUDGE
EASTERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
225 CADMAN PLAZA EAST
BROOKLYN, NEW YORK

DATED * July 27

Charles Lucchetti

CHARLES LUCCHETTI #72986
Defendant, Pro se
P.O. Box 1000
Lewisburg, Pa. 17837

7/29/75

Parole Officer-Authorized by Act of July 7, 1955, to administer oaths (18 U.S.C. 4004l)

A 350

RJD:JOB:sj
F# 715,492

August 11, 1975

Charles Lucchetti #72988
United States Penitentiary
Post Office Box 1000
Lewisburg, Pennsylvania 17837

Re: U.S. v. Charles Lucchetti
71 CR 849

Dear Mr. Lucchetti:

In response to your letter dated June 30, 1975 we make the following reply:

1. The Office of the United States Attorney for the Eastern District of New York does not have in its possession, nor has it ever had in its possession, a copy of the testimony of David Williams before the Suffolk County Grand Jury.

2. A complete copy of the Grand Jury proceedings on October 19, 1972 has already been provided pursuant to your discovery requests prior to trial. A copy of the testimony before the Grand Jury of Jack Dempsey on July 20, 1971 has already been provided as 3500 material at trial. I have enclosed a copy of the Grand Jury testimony of Agent Donald Wiebke before the Grand Jury on July 20, 1971.

3. The government will retain in its custody the photographs submitted into evidence on July 20, 1971 and those used at the first trial. Of course, we will give these photographs to the Court if the Court deems them to be relevant to your motion under Rules 29 and 34.

4. I have enclosed copies of the transcripts of the proceedings on January 3, 1975, January 9, 1975, January 15, 1975 and April 3, 1975.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By:
Joan S. O'Brien
Assistant U.S. Attorney

Enclosures

cc: Honorable Jack B. Weinstein
United States District Judge
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D.C. 20429

OFFICE OF THE GENERAL COUNSEL

August 14, 1975

P. O. Box 1000
Lewisburg, Pennsylvania 17837

Dear Mr. Lucchetti:

This responds to your letter of August 4, 1975, wherein you request information regarding Certificate No. 6963-9, dated December 23, 1969, issued by the Corporation.

The certificate for Federal deposit insurance about which you inquire was originally issued by the Corporation to The First National Bank and Trust Company of Bay Shore, Bay Shore, New York, in January 1934. This bank changed its corporate title effective February 11, 1960, to First National Bank of Bay Shore, and on July 16, 1973, to Manufacturers Hanover Trust Company/Suffolk, National Association. New certificates were issued to the bank at the time of the changes in the corporate title but the original insurance certificate number assigned to the bank was retained. Insurance applicable to the main office is applicable to any branch office of an insured bank, therefore a new certificate would be issued to the main office each time a branch is established but showing only the title of the bank and the town and state in which the main office is located.

The Manufacturers Hanover Trust Company/Suffolk, National Association is a national bank and a member of the Federal Reserve System and is insured under the provisions of section 4(b) of the Federal Deposit Insurance Act (12 U.S.C. 1814(b)). Our records indicate that the insured status of the bank has not been terminated. This bank has thirteen branches located in the following cities in the State of New York -- Brentwood, Deer Park, Bohemia, West Islip, Lindenhurst, West Smithtown, Huntington, Holbrook, Lake Ronkonkoma, Hauppauge, Port Jefferson Station, and two in Bay Shore.

You refer to the date of December 23, 1969. The Federal deposit insurance provided by the Corporation was increased from $15,000 to $20,000 by an Act of Congress on December 23, 1969, and all insured banks received new certificates at that time.

You ask -- "Could you also explain exactly what type of insurance this certificate covers." The insurance provided by the Corporation covers only losses to depositors resulting from the closing of a bank due to its inability to meet the demands of its depositors. It does not cover losses occasioned by criminal activity in an open and operating institution such as robbery, burglary, forgery, etc.

We hope this information is of assistance to you.

Sincerely,

John F Betar

John F. Betar
Administrative Counsel

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D.C. 20429

OFFICE OF THE GENERAL COUNSEL

August 25, 1975

Mr. Charles Lucchetti
P. O. Box 1000
Lewisburg, Pennsylvania 17837

Dear Mr. Lucchetti:

This responds to your letter dated August 15, 1975, wherein you acknowledge our August 14th letter, and ask additional questions regarding insurance provided by the Corporation, and the insured status of the 340 Howells Road branch of the First National Bank of Bay Shore, Bay Shore, New York, on December 21, 1970.

On July 16, 1973, the corporate title of this bank was changed to Manufacturers Hanover Trust Company/Suffolk, National Association. Our records indicate that the bank has thirteen branches located in various cities in the State of New York.

You ask -- "Does [the] Federal Deposit Insurance Corporation insure the bank or the depositors?" and "Did your corporation insure the First National Bank of Bayshore at 340 Howells Rd., Bayshore, New York for Robbery, Burglary, or Forgery on December 21, 1970?" The Corporation insures banks' deposits. The insurance applicable covers only losses of depositors resulting from the closing of a bank due to its inability to meet the demands of its depositors. Federal deposit insurance does not cover losses occasioned by criminal activity in an open and operating institution such as robbery, burglary, forgery, etc.

Your Number 2 question is -- "Did your corporation ever issue a certificate number 6963-9 for the branch office of the First National Bank of Bayshore at 340 Howells Rd., Bayshore, or did your corporation just issue a certificate for the main office?" As we wrote you in our previous letter, new certificates are, for instance, issued to the main offices of insured banks at the time corporate titles are changed, when main offices are relocated as well as at the time of the establishment of branches. When the Howells Road branch was established on June 12, 1958, a certificate for Federal

deposit insurance, which was to be displayed at that branch, was issued to the main office with that date showing thereon. Insurance applicable to the main office is applicable to all approved branch offices of an insured bank. The Howells Road branch is an approved branch and is, therefore, insured by the Corporation.

The last question in your letter referred to the bill that was passed by Congress in which the Federal deposit insurance provided by the Corporation was increased from $15,000 to $20,000. This bill number was S. 2577 and was signed by the President of the United States on December 23, 1969, thus becoming known as Public Law 91-151. You ask where you could obtain a copy of this bill. We are attaching, for your information, a copy of the section of the Public Law which amended the Federal Deposit Insurance Act, increasing the maximum coverage to $20,000.

We hope this information is of assistance to you.

Sincerely,

John F. Betar

John F. Betar
Administrative Counsel

Attachment

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA

-AGAINST-

CHARLES LUCCHETTI, DEFENDANT

NOTICE OF MOTION
No. 71-CR-849

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
AUG 8 1975
TIME A.M.
P.M.

----------X

PLEASE TAKE NOTICE:

That the defendant, Charles Lucchetti, will move this court Pro se. on the 11 day of August, 1975, at 10:00 o'clock in the forenoon thereof, or as soon thereafter as he may be heard pursuant to Rules 29 and 34 of the Federal Rules of Criminal Procedure before the Honorable Jack B. Weinstein, D.J. in the United States District Court for the Eastern District of New York, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, for an order arrest of judgment on the grounds set forth in the annexed motion of Charles Lucchetti, Defendant, Pro se, being duly sworn.

Yours, etc.

Dated July 29, 1975

Charles Lucchetti
CHARLES LUCCHETTI

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
AUG 8 1975
TIME A.M.
P.M.

DEFENDANT, Pro se
P.O. Box 1000
Lewisburg, Pa.
17837

August 6, 1975

The motion is denied. No material of significance not already considered by the trial court is now brought to the court's attention. Since an appeal is pending, this court, in any event, lacks jurisdiction. The Clerk will inform the defendant and counsel. So ordered. Jack B. Weinstein

August 12, 1975

Honorable Jack B. Weinstein
United States District Judge
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: U.S.A vs. Lucchetti
Docket No. 71-CR-849

Dear Judge Weinstein:

Please accept this as a formal application for reconsideration of my motion submitted on July 29, 1975 pursuant to Rules 29 and 34 F.R.C.P. denied by you August 6, 1975. Your denial was based on two points

1. The Court was without jurisdiction because the matter is on appeal.

2. None of the material or issues raised was of significance and that they were already considered by the Court.

In reference to Point 1 the Court has jurisdiction and the defendant relies on the authority of Rule 29 (c) and Rule 34

Rule 29 (c) "If the jury returns a verdict of guilty or is discharged without having reached a verdict, a motion for judgment of aquittal may be made or renewed within 7 days after the jury is discharged or within such further time the court may fix during the 7 day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of aquittal. If no verdict is returned the court may enter a judgment of aquittal. It shall not be necessary to the making of such a motion that a similiar motion has been made prior to the submission of the case to the jury."

Rule 34 "The court on motion of a defendant shall arrest judgment if the indictment or information does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 7 days after verdict or finding of guilty, or after plea of guilty or nole contendere, or within such further time as the court may fix during the 7 day period.

The jury returned a verdict on May 22, 1975. On May 24, 1975 the defendant submitted an application for an extension of 30 days. By your order of May 27, 1975 the 30 day extension was granted. On June 15, 1975, the defendant again made application for a 30 day extension of your original order of May 27, 1975. By your order of June 19, 1975 this order was granted. On July 29, 1975 the defendant submitted his motion within the prescribed time as set forth in Rules 29 (c) and 34. The defendant respectfully submits based on all the above this Court has jurisdiction on the instant motion.

In reference to Point 2 none of the five issues raised have been submitted to any court in their present form. Furthermore, it was impossible for the defendant to submit the above issues until the conclusion of the trial, as many of the facts involved and matters of law deal specifically with the trial and the prosecution's illicited activities. It is to be noted that the defendant submitted an application to Your Honor on June 30, 1975 requesting that the Court issue an order directing the U.S. Attorney to furnish the defendant with materials that were suppressed at the trial and hearings. This motion was granted to the extent that the Government was given 30 days to respond. The requested material will without a doubt substantiate the petitioner's claims in the instant motion and furthermore prove that the defendant was denied statuatory and constitutional rights both at his hearings and his trials on the instant matter.

At this time the defendant respectfully submits two additional arguments to be supplemented to his original motion of July 29, 1975.

A. The jury's verdict was contrary to law and the charge of the Court. That being they had to find that a gun was used that was operatable to find the defendant guilty of Count II. The defendant submits the jurors could only come back with one verdict of not guilty. In view of the fact that there was no evidence submitted at the trial that the gun was operatable.

B. The Government suppressed all 3500 material in reference to the gun ie; fingerprint reports ballistic reports and all other relevant statements in reference to the alleged gun produced in the courtroom and introduced into evidence.

The defendant prays that this Court will reconsider and will rule in favor of the petitioner/defendant and issue an order in accordance with the law and whatever relief this court deems just and proper.

Respectfully submitted,

Charles Lucchetti

Charles Lucchetti
P.O. Box 1000
Lewisburg, Pa. 17837

cc: Clerk of the Court
Joan O'Brien, Asst. U.S. Atty
Mr. Henry Boitel, Esq.
Mr. Allen Lashley

A 359

CERTIFICATE OF SERVICE

HENRY J. BOITEL, being an attorney duly admitted to practice law in the Courts of the State of New York hereby certifies that on September 22, 1975 he served one copy of the Appellant's Appendix in the within matter upon David G. Trager, Esq., United States Attorney for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201 by depositing same in a post-paid properly addressed wrapper in an official depository under the care and custody of the United States Postal Service within the State of New York.

HENRY J. BOITEL

New York, New York
September 22, 1975